



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **FFL, OPR-DR, MNR-DR**

### **Introduction**

This hearing, reconvened from an ex parte Direct Request proceeding, dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with the Interim Decision and Notice of Reconvened Hearing by registered mail sent to the tenant's address on or about August 10, 2021. The landlord submitted a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on August 15, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?  
Is the landlord entitled to a monetary award as claimed?  
Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began in September 2019. The monthly rent is \$1,800.00 payable on the first of each month. A security deposit of \$900.00 and pet damage deposit of \$900.00 were collected at the start of the tenancy and still held by the landlord.

The tenant failed to pay monthly rent as required under the tenancy agreement and there was a rental arrear of \$7,160.00 as at June 22, 2021. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on that date serving it on the tenant by posting on the rental unit door. The tenant did not pay the full amount of the arrear nor did they file an application to dispute the 10 Day Notice.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,800.00 on the first of each month. I am satisfied with the landlord's evidence including their testimony and documentary records that the tenant failed to pay the rent as required. I find there was an arrear of \$7,160.00 as at June 22, 2021 giving rise to the issuance of the 10 Day Notice.

I find that the landlord served the 10 Day Notice in a manner consistent with section 88(g) of the *Act* by posting on the rental unit door on June 22, 2021. I find that the tenant is deemed served with the notice on June 27, 2021 in accordance with section 90(c) of the *Act*. Pursuant to section 46(4) the tenant had 5 days after receiving the notice to either pay the overdue rent or dispute the notice. I find that the tenant did neither and is conclusively presumed to have accepted the tenancy ends on the corrected effective date of the notice pursuant to section 46(5). Therefore, I issue an

Order of Possession to the landlord pursuant to section 55 of the Act. As the effective date of the notice has passed I issue an Order effective 2 days after service.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$7,160.00. I issue a monetary award for unpaid rent in that amount pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$900.00 security deposit and \$900.00 pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord was successful in their application they are also entitled to recover the filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$5,460.00, allowing for recovery of the arrear and the filing fee and to retain the deposits for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 23, 2021

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Residential Tenancy Branch