



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

The landlord seeks an order of possession and a monetary order based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to sections 55(2) and 55(4)(b) of the Act. In addition, the landlord seeks to recover the cost of the application filing fee under section 72 of the Act.

It should be noted that the landlord applied for the above-noted orders by way of a direct request application made on October 18, 2021. For various reasons which are explained in an adjudicator’s Interim Decision of December 3, 2021, the application was adjourned to a participatory hearing on January 17, 2022 scheduled at 11:00 AM. Only the landlord’s agent (hereafter the “landlord”) attended the hearing.

### **Preliminary Issue: Service**

In cases where a respondent does not attend a hearing, I must be satisfied that the respondent was properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and the Residential Tenancy Branch’s *Rules of Procedure*, and there must be evidence to support a finding that service occurred.

The landlord testified that his building manager served the Notice of Dispute Resolution Proceeding on the in-person on December 5, 2021. A proof of service document was in evidence and was signed by the building manager.

Given the evidence before me, it is my finding that the tenant was appropriately served with the Notice of Dispute Resolution Proceeding and documentary evidence necessary for him to participate fully in these proceedings.

### Issues

Is the landlord entitled to an order of possession, a monetary order, and to recover the cost of the filing fee?

### Background and Evidence

The landlord confirmed that he served the Notice, a copy of which is in evidence, on the tenant by posting the Notice on the door of the rental unit on October 1, 2021. The Notice indicated that the tenant was in rent arrears in the amount of \$11,550.00. As of January 1, 2022, the tenant is now in arrears to the amount of \$14,700.00. To the landlord's knowledge the tenant never disputed the Notice, nor did he pay the outstanding rent. Documentary evidence also included a copy of the tenancy agreement, notices of rent increases, and additional correspondence.

### Analysis

Rent must be paid when it is due under a tenancy agreement ([section 26\(1\)](#) of the Act). A landlord may issue a notice to end the tenancy under [section 46](#) of the Act if a tenant does not pay rent on time and in full.

If a tenant does not pay the amount of rent owing, or if they do not dispute the notice within 5 days, they are presumed to have accepted the notice and must vacate by the effective end of tenancy date indicated on the notice ([section 46\(5\)](#) of the Act).

A landlord may seek an order of possession and a monetary order if a tenant has not disputed the notice and the time for filing an application to dispute that notice has passed ([sections 55\(2\)\(b\) and 55\(4\)](#) of the Act).

In this dispute, the tenant did not, and has not, paid rent on time and in full. Consequently, the landlord served the tenant with the Notice. The tenant did not pay the rent owing and did not dispute the Notice. The time for disputing the time has expired.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving that the Notice was issued pursuant to the Act and that they are entitled to both an order of possession and a monetary order.

Pursuant to section 55(2)(b) of the Act the landlord is granted an order of possession. A copy of this order of possession is issued in conjunction with this decision to the landlord. The landlord or his building manager must serve a copy of the order of possession on the tenant. Upon service, the tenant must vacate the rental unit within two days. If the tenant fails to comply with the order, then the landlord may file the order in the Supreme Court of British Columbia and obtain a writ of possession.

Pursuant to sections 55(4) and 67 of the Act the tenant is ordered to pay the landlord \$14,700.00 in unpaid rent, and pursuant to section 72 of the Act he is ordered to pay the landlord an additional \$100.00 for the application filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order and authorize the landlord to retain the tenant’s security deposit of \$475.00 and pet damage deposit of \$475.00 in partial satisfaction of the above-noted award.

The landlord is granted a monetary order in the amount of \$13,850.00. A copy of this monetary if issued in conjunction with this decision to the landlord. The landlord or his property manager must serve a copy of this order on the tenant. Should the tenant refuse to pay this amount within 15 days of being served then the landlord may file and enforce the monetary order in the Provincial Court of British Columbia (Small Claims).

### Conclusion

**The application is granted.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 17, 2022

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Residential Tenancy Branch