



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:45 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by agent HL (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000.”

I accept the landlord’s testimony that the tenant was served with the application and evidence (the materials) by registered mail on January 17, 2022 to the updated rental unit’s address, in accordance with section 89(2)(b) of the Act (the tracking number and the updated tenancy address are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence

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*#RTB-136 (2014/12)*



of registered mail the tenant is deemed to have received the materials on January 22, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

#### Preliminary Issue – Update of Tenancy and tenant's Addresses

At the outset of the hearing the landlord corrected the tenancy and the tenant's addresses. The landlord affirmed he listed the rental unit's address as basement instead of unit 2 because he was not aware of the correct tenancy and tenant's addresses when he submitted this application.

Pursuant to section 64(3)(a) of the Act, I have amended the landlord's application.

#### Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend his application for \$1,000.00 in unpaid rent to include an additional \$5,000.00 for the unpaid rent of December 2021, January, February, March and April 2022.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$6,000.00.

#### Issues to be Decided

Is the landlord entitled to:

1. an order of possession under the Notice?
2. a monetary order for unpaid rent?
3. an authorization to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the evidence of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on June 01, 2021. Monthly rent is \$1,000.00, due on the first day of the month. At the outset of the tenancy a security deposit (the deposit) of \$500.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord served the Notice by registered mail on November 17, 2021 to the updated tenancy address (the tracking number is recorded on the cover page of this decision).

The landlord submitted into evidence a proof of service (RTB34) indicating the Notice was served on November 17, 2021.

The landlord submitted a copy of the November 17, 2021 Notice. It indicates the tenant did not pay rent in the amount of \$1,000.00 due on November 01, 2021. The effective date is December 05, 2021.

The landlord affirmed the tenant has not paid rent and continues to occupy the rental unit.

The landlord is claiming for an order of possession and a monetary order for rental arrears of \$6,000.00 for November, December 2021, January, February, March and April 2022.

The landlord submitted a direct request worksheet into evidence.

### Analysis

I accept the uncontested testimony that the landlord served the Notice on November 17, 2021, in accordance with section 88(c) of the Act. Per section 90(a) of the Act, the tenant is deemed to have received the Notice on November 22, 2021.

### Order of possession

Based on the landlord's convincing testimony and the tenancy agreement, I find that the landlord and the tenant agreed to a tenancy and the tenant was obligated to pay the monthly rent in the amount of \$1,000.00 on the first day of each month.

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Based on the landlord's convincing testimony, the Notice, and the direct request worksheet, I find the tenant has not paid November, December 2021, January, February, March and April 2022 rent in the amount of \$1,000.00 per month.

I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord's agent, gives the updated address of the rental unit, states the ground to end tenancy and the effective date and it is in the approved form.

Section 68(2) of the Act states:

(2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,  
(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy

Based on the above, as the tenant is currently occupying the rental unit, I find the tenancy ends on the date of this decision, per section 44(1)(a)(ii) and 68(2)(a) of the Act.

I award the landlord an order of possession, per section 55(2)(b) of the Act.

#### Monetary order

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Section 57(3) of the Act states: "A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended."

Per section 26(1) of the Act, I award the landlord November, December 2021, January, February and March 2022 rent in the amount of \$1,000.00 per month and *per diem* rent from April 01 to 06, 2022 (the date of this decision) in the amount of \$199.98 ( $\$1,000.00/30 \times 6$  days).

The landlord is at liberty to apply for compensation for overholding tenant.

#### Filing fee, deposit and summary

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$500.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent November and December 2021, January, February and March 2022 (\$1,000.00 x 5)	5,000.00
Unpaid rent April 01 to 06, 2022	199.98
Filing fee	100.00
Subtotal	5,299.98
Deposits (minus)	500.00
<b>Total:</b>	<b>4,799.98</b>

### Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Per sections 26, 38 and 72 of the Act, I authorize the landlord to retain the \$500.00 deposit and award the landlord \$4,799.98. The landlord is provided with this order in the above terms and the tenant must be served with this order. 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: April 06, 2022

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