



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, OPR, MNRL

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. Landlord P.A. and a co-owner of the property attended the hearing and were 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 landlord P.A., the co-owner and I were the only ones who had called into this teleconference.

Landlord P.A. confirmed his email addresses for service of this decision and orders.

Landlord P.A. testified that the tenant was personally served with a copy of the landlords' application for dispute resolution and evidence in person on February 9, 2022. The landlords entered into evidence a hand delivery receipt signed by the tenant stating that he was given "notice of dispute resolution" on February 9, 2022 and the above service was witnessed by I.D. I find that the tenant was personally served with the landlords' application for dispute resolution on February 9, 2022 in accordance with section 89 of the *Act*.

I accept landlord P.A.'s undisputed testimony that the landlords' evidence was also provided to the tenant on February 9, 2022, in accordance with section 88 of the *Act*.

### Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord's original application claimed unpaid rent in the amount of \$2,221.79. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$2,438.16.

I find that in this case the fact that the landlords are seeking compensation for all outstanding rent/ compensation for overholding, not just the amount outstanding on the date the landlords filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent and compensation for overholding, in the amount of \$2,438.16

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of landlord P.A. and the co-owner, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Landlord P.A. provided the following undisputed testimony. This tenancy began on December 1, 2015 and the tenant is still residing in the subject rental property. In 2021 monthly rent in the amount of \$1,053.00 was payable on the first day of each month. From January 1, 2022 to the present date, rent in the amount of \$1,068.79 is payable on the first day of each month. A security deposit of \$492.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Landlord P.A. testified that the tenant started falling behind on rent in September 2021 and has not since that time brought the balance owing to \$0.00. The landlords entered into evidence a ledger which supports the above testimony and shows that as of April 7, 2022, the tenant owed \$2,878.16.

Landlord P.A. testified that on January 8, 2022 the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"). The 10 Day Notice was entered into evidence and states that the tenant owes \$2,856.00 for rent due between November 2021 to January 2022 and must vacate the subject rental property by January 18, 2022. The landlords entered into evidence a witnessed proof of service document stating same.

Landlord P.A. states that after receiving the Notice, the next payment received by the tenant was for \$350.00 on January 15, 2022. The ledger states that after taking into account the \$350.00 payment made on January 15, 2022, the tenant still owed \$2,521.79 in unpaid rent.

Landlord P.A. testified that since April 7, 2022, the tenant made a payment in the amount of \$200.00 on April 9, 2022 and a payment of \$240.00 on April 23, 2022. Landlord P.A. testified that taking into consideration the above payments, the tenant now owes \$2,438.16 in unpaid rent which includes all rent for the month of April 2021.

## Analysis

Based on landlord P.A.'s undisputed testimony and the witnessed proof of service document, I find that the tenant was personally served with the Notice on January 8, 2022, in accordance with section 88 of the *Act*.

Upon review of the Notice I find that it meets the section 52 form and content requirements.

Based on the undisputed testimony of landlord P.A. and the ledger entered into evidence, I find that the tenant failed to pay the outstanding rent within five days of receiving the Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises by January 18, 2022, as that has not occurred, I find that the landlords are entitled to an Order of Possession effective on April 30, 2022 at 1:00 p.m. The landlords will be given a formal Order of Possession which must immediately be served on the tenant. If the tenant does not vacate the rental unit at the required time, the landlord may enforce this Order in the Supreme Court of British Columbia.

I accept landlord P.A.'s undisputed testimony that rent for 2021 was \$1053.00 due on the first day of each month. I accept landlord P.A.'s undisputed testimony that rent for 2022 is \$1068.79 due on the first day of each month.

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 this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent on the first day of each month.

Residential Tenancy Policy Guideline #3 (PG #3) states:

If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and

occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.

Based on the testimony of the landlords and the ledger entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and did not pay the landlords compensation for overholding the subject rental property past January 18, 2022, when the tenancy officially ended, contrary to PG #3.

Based on the testimony of landlord P.A. and the ledger entered into evidence I find that the tenant owes \$2,438.16 for rent and compensation for overholding accumulated between September 2021 and April 30, 2022. Pursuant to section 67 of the *Act*, I award the landlords \$2,438.16.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective at **1:00 p.m. on April 30, 2022**, which should be served 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.

I issue a Monetary Order to the landlords in the amount of \$2,538.16.

The landlords are provided with this Order in the above terms and 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: April 26, 2022

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Residential Tenancy Branch