



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

The Landlord applied for dispute resolution (“Application”) by way of an *ex parte* Direct Request Proceeding under section 55(4) of the *Residential Tenancy Act* (the “Act”). The Landlord requests an Order of Possession under a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), a Monetary Order for unpaid rent and authorization to recover the filing fee for their Application from the Tenant.

During the direct request proceeding it was determined by the Adjudicator that the Proof of Service Notice to End Tenancy document contained no witness statement to verify service of the Notice. As a result, it was ordered that the proceeding be adjourned and reconvened as participatory hearing under section 74 of the Act.

The hearing was attended by the Landlord who affirmed to tell the truth during proceedings and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions. The teleconference commenced at 9:30 A.M. and the line was left open until 9:50 A.M. to enable the Tenant to call in, however no party attended for the Tenant.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only parties who had called into this teleconference.

Rule 7.1 of the *Rules of Procedure* states that a hearing will commence at the scheduled time, unless otherwise set by the Arbitrator. Additionally, rule 7.3 of the *Rules*

*of Procedure* states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party.

The Landlord testified the Notice of Dispute Resolution Package (The “Materials”) for their Direct Request Proceeding Application were served on the Tenant via registered mail on January 18, 2023. The Materials for the adjourned participatory hearing were served on the Tenant via registered mail on March 25, 2023. Therefore, I find that pursuant to sections 89 and 90 of the Act, that the Landlord’s Materials were sufficiently served to the Tenant. The registered mail tracking numbers are included on the front page of this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to recover the filing fee for the Application from the Tenant?

### Background and Evidence

The attending party was given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Landlord confirmed that the tenancy started on April 1, 2019 and that rent is \$1,370.00 per month due on the first day of the month. The Landlord also testified that a security deposit of \$625.00 was taken which they still retain. A copy of the written tenancy agreement (“Tenancy Agreement”) was entered into evidence by the Landlord. The Landlord stated they believe the Tenant vacated the rental unit some time in February 2023.

The Landlord testified that rent due on January 1, 2023 went unpaid and the Notice dated January 4, 2023 was served to the Tenant by being attached to the door of the rental unit on January 4, 2023. No payments were received from the Tenant since the Notice was issued.

The Notice provides an effective date of January 14, 2023 and outstanding rent amounting to \$1,395.00. The Landlord explained that an extra \$25.00 had been added to the amount of unpaid rent to take into account a late payment fee. I was referred to paragraph two of the Tenancy Agreement which states that the Tenant agrees to pay a fee of \$50.00 for each late payment or rent or dishonoured cheque.

The Landlord stated that as there are still some of the Tenant's belongings at the rental unit, they seek an Order of Possession in case the Tenant tried to re-occupy the unit. The Landlord stated that they seek a Monetary Order for \$2,790.00 as rent was also not paid on February 1, 2023. This amount takes into account the unpaid rent and the late payment fees of \$25.00 for both January 2023 and February 2023.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Additionally, section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

I accept the Landlord's undisputed testimony that rent due January 1, 2023 was not paid by the Tenant. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

The Notice was served on January 4, 2023 by attaching to the door of the rental unit, therefore would have been deemed received on January 7, 2023, the third day after it is issued in accordance with section 90 of the Act. Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read January 17, 2023 instead of January 14, 2023.

I accept the Landlord's undisputed testimony that the outstanding rent was not paid in full within five days of the Tenant receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a). Additionally, there is no record of the Tenant disputing the Notice. Therefore, under section 46(5) of the Act, the Tenant is presumed to have accepted the Notice.

Based on the above findings, the Landlord is granted an Order of Possession pursuant to section 55(2)(b) of the Act. A copy of the Order of Possession is attached to this

Decision and must be served on the Tenant. The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on January 17, 2023. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

I find the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. The Landlord confirmed the balance of unpaid rent requested is made up partially of late fees. I note the Tenancy Agreement at paragraph 2 provides for a charge of \$50.00 per late payment which is not in accordance with section 7 of the *Residential Tenancy Regulation* which limits the amount a landlord can charge to \$25.00 for late payment of rent.

In accordance with section 5(2) of the Act which sets out that any attempt to avoid or contract out of this Act or the *Residential Tenancy Regulations* is of no effect, I find that the term is not enforceable, that the Landlord is not entitled to the late payment fees and that the Landlord is entitled to unpaid rent only. Therefore, the Tenant is ordered to pay \$2,740.00 in unpaid rent to the Landlord.

As the Landlord has been successful in their Application, I order the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order. A Monetary Order for the remaining amount is attached to this Decision and must be served on the Tenant. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

The Landlord is issued an **Order of Possession**.

The Landlord is issued a **Monetary Order**.

The Monetary Order is summarized below.

Item	Amount
Unpaid rent	\$2,740.00
Filing fee	\$100.00
Less: security deposit	(\$625.00)
<b>Total</b>	<b>\$2,215.00</b>

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

Dated: April 20, 2023

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Residential Tenancy Branch