



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### **Introduction**

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord attended the hearing. Neither of the tenants did, although I left the teleconference connection open from 9:30 a.m. to 9:48 a.m. 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.

The landlord testified that he sent each of the tenants a copy of the Notice of Dispute Resolution Proceedings package via registered mail at the rental unit on December 29, 2022. The landlord provided the tracking numbers for the mailings, and they are recorded on the cover page of this decision. I deem the tenants served with the notices on January 3, 2023, the fifth day after mailing pursuant to sections 89 and 90 of the Act.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession and monetary order for unpaid rent?  
Can the landlord recover the filing fee?

### **Background and Evidence**

The landlord gave the following undisputed testimony. The tenancy began with a different tenant, “G” in December of 2020. There was no written tenancy agreement and “G” was referred to the landlord by a trusted friend. In the middle of 2021, “G” became injured and had to go away for a while. “G” was granted the landlord’s permission to have the tenant SB continue renting the unit until “G” could return.

SB paid the \$1,200.00 per month rent to the landlord regularly upon taking over the rental unit. "G" never returned, so SB asked if his friend JC could move in with him, sometime in October 2021. SB and JC continued to pay rent until the end of December, however payments began to become erratic in January of 2022.

The landlord provided a spreadsheet indicating the tenants were short \$500.00 for January 2022. From then on, rent was either short or not paid whatsoever. As of December 1, 2022, the tenants were in arrears of \$7,460.00.

On December 13, 2022, the landlord served SB and JC with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities by posting a copy to the door of the rental unit. A signed proof of service document was provided, as was a copy of the notice to end tenancy, stating that the tenants failed to pay rent in the amount of \$7,460.00 due on December 1, 2022. The landlord testified that the tenants did not pay the arrears within 5 days of receiving the notice and did not file an application to dispute it, to the best of his knowledge.

The landlord provided a receipt to show that the tenants made a single payment of \$600.00 towards the arrears on January 2, 2023. This payment was not shown on the landlord's spreadsheet (copied below), and the landlord asked that the monetary order sought be decreased by \$600.00 to \$11,660.00.

<b>Month &amp; Date Rent was Due</b>	<b>Rent Amount Owing</b>	<b>Amount of partial payment(s) received</b>	<b>Date of partial payment(s)</b>	<b>Balance rent owed</b>
Jan 1/2022	\$ 500.00			\$ 500.00
Feb 1/2022	\$ 1,200.00			\$ 1,700.00
March 1/2022	\$ 1,200.00	\$ 400.00	March 4/2022	\$ 2,500.00
April 1/2022	\$ 1,200.00	\$ 450.00	April 14/2022	\$ 3,250.00
May 1/2022	\$ 1,200.00	\$ 500.00	April 28/2022	\$ 3,950.00
June 1/2022	\$ 1,200.00	\$ 600.00	May 13/2022	\$ 4,550.00
July 1/2022	\$ 1,200.00	\$ 300.00	May 26/2022	\$ 5,450.00
August 1/2022	\$ 1,200.00	\$ 600.00	June 28/2022	\$ 6,050.00
September 1/2022	\$ 1,200.00	\$ 600.00	July 18/2022	\$ 6,650.00
October 1/2022	\$ 1,200.00	\$ 600.00	July 20/2022	\$ 7,250.00
November 1/2022	\$ 1,200.00	\$ 90.00	July 28/2022	\$ 8,360.00
December 1/2022	\$ 1,200.00	\$ 600.00	August 25/2022	\$ 8,960.00

		\$ 300.00	September 30/2022	\$ 8,660.00
		\$ 600.00	October 29/2022	\$ 8,060.00
		\$ 600.00	November 26/2022	\$ 7,460.00
January 1/2023	\$ 1,200.00			\$ 8,660.00
February 1/2023	\$ 1,200.00			\$ 9,860.00
March 1/2023	\$ 1,200.00			\$ 11,060.00
April 1/2023	\$ 1,200.00			\$ 12,260.00

Less payment received on January 2, 2023 (\$600.00). Total: \$11,660.00.

### Analysis

Pursuant to section 1 of the Residential Tenancy Act, a tenancy agreement is defined as follows:

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit

Based on the undisputed testimony of the landlord, I find that there was an implied tenancy agreement between the landlord and the two named tenants, SB and JC, effective October 1, 2021, since from that time forward, they were regularly paying rent to the landlord in order to occupy the rental unit.

Pursuant to section 55(2)(b), a landlord may request an order of possession of a rental unit by making an application for dispute resolution if a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Without any further dispute resolution process under Part 5 [Resolving Disputes], the director may grant an order of possession, and if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent, pursuant to section 55(4).

I find the tenants were effectively served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on December 16, 2022, the third day after a copy was posted to their door in accordance with sections 88 and 90 of the Act. The tenants did not make an application to dispute the notice within the 5 days as required by section 46(4) of the Act and the time to make that application expired on December 21, 2022. Pursuant to section 55(4), the landlord is entitled to an Order of Possession. As the effective date shown on the notice to end tenancy has passed, the landlord is granted an Order of Possession effective 2 days after service upon the tenants.

Based on the undisputed testimony of the landlord, I find the tenants were obligated to pay rent in the amount of \$1,200.00 per month on the first day of each month and failed to do so. I have considered the landlord's spreadsheet and I find the tenants are obligated to compensate the landlord with rent in the amount of \$11,660.00. In accordance with Rule 4 of the Residential Tenancy Branch Rules of Procedure, I have amended the landlord's application to include additional arrears in rent as the amendment could reasonably be anticipated by the tenants. Pursuant to section 55(4), the landlord is awarded a monetary order in the amount of \$11,660.00.

As the landlord's application was successful, the filing fee of \$100.00 can be recovered from the tenants.

#### Conclusion

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

I award the landlord a monetary order in the amount of **\$11,760.00**.

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 28, 2023

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Residential Tenancy Branch