



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An Order of Possession under a 10-Day Notice to End Tenancy for Unpaid Rent and Utilities (“10 Day Notice”) pursuant to sections 46 and 55;
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

The landlord attended. The landlord had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

Preliminary issues were the following.

1. Attendance of Tenant

The landlord explained that of the tenants, two adults (NW and JM) are parents of the remaining tenants who are minor children. I direct the names of the children be removed from the application and the proceedings amended accordingly.

The tenants are referred to in the singular.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 35 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

2. Recording

The persons attending were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. They confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

3. Delivery of Decision

The landlord confirmed their email address to which a copy of the Decision and any Order will be sent.

4. Service

As the tenant did not attend the hearing, I asked the landlord to confirm that they served the tenant with the Notice of Hearing and Application for Dispute Resolution for this hearing for the landlord's claims.

This is a continuation of a Direct Request hearing before an Adjudicator by decision dated December 12, 2022. The Adjudicator order that a participatory hearing to be conducted by an arbitrator to determine the details of the landlord's application. The Adjudicator directed the landlord to serve the tenant:

The landlord must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.

The landlord testified he posted all the documents as required by the Adjudicator to the door of the unit on December 15, 2022, thereby effecting service three days later December 18, 2022.

Further to the uncontested testimony of the landlord, I find the landlord served the tenant in compliance with the Act.

5. Security deposit

The landlord requested an amendment to the landlord's application to request that the landlord be authorized to apply the security deposit of \$1,300.00 held by the landlord to any monetary award granted pursuant to section 72.

The landlord testified the tenant paid the landlord a security deposit in this amount at the start of the tenancy which the landlord holds. The tenant has not given the landlord permission to apply the security deposit to outstanding rent.

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the tenant could anticipate the landlord's claim would be amended to include a request authorizing the landlord to apply the security deposit to a monetary award for outstanding rent. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to allow the landlord to request that the security deposit be applied to any monetary award.

6. Summary of Landlord's Monetary Claim

In summary, the landlord requested a Monetary Order as follows:

ITEM	AMOUNT
Rent outstanding	\$26,000.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,300.00)
TOTAL MONETARY ORDER REQUESTED	\$24,800.00

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The landlord provided uncontradicted affirmed testimony as the tenant did not appear at the hearing.

While I have turned my mind to the evidence and the testimony 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.

Tenancy

The tenancy started June 15, 2021, and monthly rent of \$2,600.00 was due on the 15th of the month. The tenant paid a security deposit of \$1,300.00 which is held by the landlord.

The landlord testified the tenant has not paid rent since January 1, 2022, and the accumulated rent to October 15, 2022, is \$26,000.00.

The landlord testified the landlord issued a 10 Day Notice in the standard RTB form, a copy of which was submitted. The details are as follows:

INFORMATION	DETAILS
Type of Notice	10 Day Notice
Date of Notice	February 27, 2022
Effective Date of Notice	March 10, 2022
Date and Method of Service	February 27, 2022, by posting to door
Effective Date of Service	March 2, 2022
Reasons for Issuance	Nonpayment rent
Arrears - current	\$26,000.00

The 10 Day Notice provides the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date.

The tenant has not filed an Application for Dispute Resolution.

The tenant has not provided written authorization to the landlord to apply the deposit to outstanding rent.

The landlord provided uncontradicted testimony and supporting evidence that the amount claimed remain unpaid and owing to the landlord. The tenant has made no payment on rent since February 1, 2022.

The landlord testified the current arrears of rent are \$26,000.00 and requested an award in this amount. The landlord submitted a Monetary Order worksheet and spreadsheet calculating the rent owed.

The landlord requested reimbursement of the filing fee and authorization to apply the security deposit to the award as follows:

ITEM	AMOUNT
Rent outstanding	\$26,000.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,300.00)
TOTAL MONETARY ORDER REQUESTED	\$24,800.00

Analysis

I have reviewed the uncontradicted evidence of the landlord and make the following findings.

10 Day Notice

I find the form and content of the 10 Day Notice complies with section 52 of the Act.

I accept the landlord's testimony that the tenant was served with the 10 Day Notice as testified and find service was in accordance with the Act.

I accept the landlord's testimony and documentary evidence regarding outstanding rent. I find the tenant did not pay the overdue amount claimed and has made no periodic payment on outstanding rent.

The tenant has not attended the arbitration. The tenant has not filed an Application for Dispute Resolution.

The landlord testified the tenant remains in the unit.

Pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice requiring the tenant to vacate the rental unit.

Order of Possession

Based on the Act and the uncontradicted credible evidence of the landlord, I grant the landlord an Order of Possession pursuant to sections 46 and 55 effective on 2 days notice.

Monetary Order

Based on the uncontradicted testimony and credible documentary evidence of the landlord, I grant the landlord a Monetary Order pursuant to section 55 for outstanding rent as requested in the amount of \$26,000.00.

Filing Fee

As the landlord has been successful in this application, I award the landlord reimbursement of the filing fee of \$100.00 pursuant to section 72.

Security deposit

I authorize the landlord to apply the security deposit to the award pursuant to section 72.

Summary of Award

My award is summarized as follows.

ITEM	AMOUNT
Rent outstanding	\$26,000.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,300.00)
TOTAL MONETARY ORDER	\$24,800.00

Conclusion

The landlord is granted an Order of Possession effective on 2 days notice.

The landlord is granted a Monetary Order for. \$24,800.00sig

These Orders must be served on the tenant. The Orders may be registered and enforced in the Courts of the Province of BC.

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 20, 2023

Residential Tenancy Branch