



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNRL-S

### Introduction

This hearing was scheduled to convene at 11:00 a.m. on May 23, 2023 concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities and an order permitting the landlord to keep all or part of the security deposit.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord testified that the tenant was served with the Notice of Dispute Resolution Proceeding by registered mail on February 9, 2023 and has provided a copy of a Canada Post cash register receipt containing that date and a tracking number, and a Registered Domestic Customer Receipt addressed to the tenant at the address of the rental unit. The mail was not collected by the tenant, and the landlord has also provided evidence of other attempts to serve the tenant.

The *Residential Tenancy Act* states that documents sent by registered mail are deemed to have been served 5 days after mailing. The landlord's evidence includes a copy of an envelope addressed to the tenant at the rental unit with the tracking number visible. I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord also testified that all evidence has been provided to the tenant. I accept that testimony, and all evidence provided by the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 2023 was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on August 2, 2016 and expired on January 2, 2017, and the tenant still resides in the rental unit. Rent in the amount of \$1,100.00 was payable on the 2<sup>nd</sup> day of each month, which was increased in 2018 by 4% to \$1,145.00 per month and again by 1.5% in 2022 to \$1,165.00 per month. The parties mutually agreed that rent would be paid on the 1<sup>st</sup> day of each month.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a ground floor suite, and the landlord resides in the upper level. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that the tenant was served with several 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, copies of which have been provided for this hearing. The latest is dated May 2, 2023 and contains an effective date of vacancy of May 12, 2023 for unpaid rent in the amount of \$1,165.00 that was due on May 1, 2023 and unpaid utilities in the amount of \$63.00 following written demand on May 1, 2023. It also states that previous rental arrears are outstanding as well. It was served by posting it to the door of the rental unit on May 2, 2023. The tenant has not disputed any of the notices to end the tenancy.

The landlord has also provided a copy of a tenant ledger indicating that the tenant is currently in arrears of rent and utilities combined totaling \$11,185.90. The landlord testified that the unpaid rent portion is \$9,235.00 and unpaid utilities amount to \$1,950.90.

### Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full, in which case the Notice is of no effect, or may dispute the Notice within that 5 day period. If a tenant fails to dispute a notice to end a tenancy given by a landlord, the tenant is conclusively presumed to have accepted the end of the tenancy.

I have reviewed all of the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, and I find that all are in the approved form and contain information required by the *Act*. I also accept the undisputed testimony of the landlord that the tenant has not served the landlord with a Notice of Dispute Resolution Proceeding disputing any of the Notices, and I have no such applications before me. I have also reviewed the tenant ledger provided by the landlord, which clearly shows that the tenant did not pay the rent within 5 days. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant. The tenant must be served with the Order of Possession which may be filed in the Supreme Court of British Columbia for enforcement.

With respect to the landlord's monetary claim, I accept the undisputed testimony of the landlord that arrears of rent and utilities has continued to accumulate. I find that the landlord has established a monetary claim as against the tenant in the amount of \$11,185.90.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$550.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlord for the difference of \$10,735.90. The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further order the landlord to keep the \$550.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$10,735.90.

This order is final and binding and may be enforced.

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: May 23, 2023

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Residential Tenancy Branch