



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING  
CORPORATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNRL-S, OPR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 08, 2019 (the “Application”). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 11, 2019 (the “Notice”). The Landlord also sought to recover unpaid rent, to keep the security deposit and reimbursement for the filing fee.

The Agent appeared at the hearing for the Landlord. E.M. appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

E.M. advised at the outset that he had vacated the rental unit September 30, 2019. The Landlord was not aware of this and the Agent still sought an Order of Possession for the rental unit.

The Landlord submitted evidence prior to the hearing. E.M. did not. I addressed service of the hearing package and Landlord’s evidence and E.M. confirmed he received these.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The agreement is between the Landlord and D.G. The tenancy started September 01, 2008 and is a month-to-month tenancy. Rent was originally \$850.00 per month. Rent is due on the first day of each month. D.G. paid a \$425.00 security deposit.

Term 11 of the agreement states that “the Tenant will allow only the following Occupants to reside in the Rental Unit” and names D.G. and E.M.

The agreement was signed by D.G. and for the Landlord.

It was agreed that D.G. was E.M.’s grandfather and that D.G. passed away in March of this year.

E.M. took the position that he is not a tenant in relation to the rental unit or tenancy agreement in this matter. E.M. testified as follows. It was not brought to his attention that he was a tenant in relation to the tenancy agreement or rental unit. There is no documentation stating he is a tenant in relation to the rental unit. He was given documents about transferring the tenancy agreement; however, this was not accepted by the Landlord because he was not part of BC Housing. He never consented to being a tenant in relation to the rental unit.

E.M. further testified as follows. The Landlord used to withdraw rent directly from his grandfather’s account. He contributed to rent by giving money to his grandfather. When his grandfather passed away, his account was frozen. He gave the Landlord money so he could use the rental unit until he found a place to stay. He started paying the Landlord the rent money in April and set up automatic withdrawal at the end of May or beginning of June. It took him six months to find a new place.

The Agent testified as follows in relation to whether E.M. is a tenant under the tenancy agreement. E.M. was a minor when the agreement was entered into which is why he did not sign the agreement. The rental unit is subsidized. Tenants are required to be registered with BC Housing. D.G. was registered with BC Housing. When D.G. passed away, E.M. did pay the Landlord rent. The Landlord could not continue offering the subsidy without E.M. being registered with BC Housing. The Landlord gave E.M. a four-month grace period. The Landlord told E.M. to register with BC Housing and gave him the application form and transfer documents to find him a one bedroom unit. E.M. did not register with BC Housing and was never transferred.

E.M. testified that he vacated the rental unit September 30, 2019. He acknowledged he still has the keys to the rental unit. E.M. testified that he had been going back to the rental unit between September 30, 2019 and the hearing to pick up belongings, dispose of belongings, clean and fix damage in the unit.

I asked E.M. if he let the Landlord know he moved out of the rental unit. E.M. testified that he left a voice message for the Landlord in September about removing the automatic withdrawal for rent but never heard back from the Landlord.

The Agent testified that the Landlord was not aware E.M. vacated the rental unit and never received the keys back.

In relation to the rent amount, the Agent testified that the market rent for the unit has been \$1,129.00 per month since January of this year. The Agent testified that rent was \$740.00 with D.G.'s subsidy. The Agent testified that rent for April to September was \$740.00 given the four-month grace period after D.G. passed away. The Agent testified that, as of October, rent was \$1,108.00 because E.M. was not receiving a subsidy.

E.M. agreed rent for April to September was \$740.00. The Landlord had submitted a letter dated August 21, 2019 addressed to E.M. advising that his rent contribution would be \$1,108.00 effective October 01, 2019. E.M. testified that he probably received this letter.

The 10 Day Notice was submitted as evidence. It states that D.G. and E.M. failed to pay \$765.00 in rent due September 01, 2019. It is addressed to D.G. and E.M. It relates to the rental unit. It is signed and dated by the Agent. It has an effective date of September 21, 2019. E.M. did not take issue with the form or content of the Notice.

The Agent testified that both pages of the Notice were posted to the door of the rental unit September 11, 2019. E.M. testified that his sister found the Notice on the door of the rental unit. He could not recall what date this occurred. He did recall receiving both pages of the Notice.

The Agent testified that September rent was not paid which is reflected on the Notice along with the NSF fee. The Agent testified that no rent has been paid since the Notice was issued. The Landlord submitted a rent ledger for 2019.

E.M. agreed he did not pay September rent. E.M. agreed he did not pay any rent since the Notice being issued. E.M. testified that he did not have the funds to pay rent.

E.M. testified that he did not dispute the Notice.

### Analysis

Based on the written tenancy agreement, and the evidence before me, I find E.M. is an occupant of the rental unit and not a tenant under the tenancy agreement. I find this given the tenancy agreement is specifically between the Landlord and D.G. and was only signed by D.G. Further, I find term 11 indicates that E.M. is an occupant.

Given the outline of events provided by the parties, I find the tenancy agreement between the Landlord and D.G. was not ended in accordance with section 44 of the *Act*.

Section 26(1) of the *Residential Tenancy Act* (the "*Act*") requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows landlords to end a tenancy where tenants have failed to pay rent. The relevant portions of section 46 state:

- 46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date...

Based on the written tenancy agreement and testimony of the parties, I accept that rent was \$740.00 per month due on the first day of each month for April to September. Based on the testimony of both parties, I accept September rent was not paid. E.M. did not submit that September rent was not paid based on some authority under the *Act* to withhold rent. Given this, I find rent of \$740.00 had to be paid by September 01, 2019 pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Given September rent was not paid, the Landlord was entitled to serve the Notice pursuant to section 46(1) of the *Act*.

Based on the testimony of both parties, I accept that the Notice was posted to the door of the rental unit. I accept the testimony of the Agent that this was done September 11, 2019. E.M. did not dispute this, he did not recall when it was served. I have no reason to doubt the testimony of the Agent on this point. I find the Notice was served in accordance with section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, I find the Notice was deemed received September 14, 2019.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

Section 46(4) of the *Act* allowed for the outstanding rent to be paid or the Notice to be disputed within five days of receipt of the Notice. Given the testimony of the parties, I find the outstanding rent was not paid within five days of September 14, 2019.

Given the testimony of E.M., I find the Notice was not disputed within five days of September 14, 2019.

Given the above, I find the conclusive presumption in section 46(5)(a) of the *Act* applies. I find the tenancy ended September 24, 2019, the corrected effective date of the Notice.

I find the Landlord is entitled to an Order of Possession. Pursuant to section 55(3) of the *Act*, I issue the Landlord an Order of Possession effective two days after service of the Order. I have included D.G. on the Order of Possession given it is the tenancy between the Landlord and D.G. that is ending.

In relation to E.M., I find the relationship between him and the Landlord to be a licence to occupy. Policy Guideline 9 addresses licences to occupy and states in part:

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time....

If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise...

I find the relationship was a licence to occupy for the following reasons. E.M. was not a tenant under the tenancy agreement between the Landlord and D.G. He was an occupant. When D.G. passed away, E.M. continued to reside at the rental unit. E.M. did not enter into a new tenancy agreement with the Landlord. I find from the testimony of both parties that the parties understood possession of the rental unit to be temporary until E.M. registered with BC Housing, was transferred to a different unit or found a new place on his own. I find based on the testimony of the parties, that there was no understanding between the parties that they were entering into a new tenancy agreement for the rental unit under the same terms that had existed between the Landlord and D.G.

Given the testimony of the parties, I find it was understood that E.M. would pay \$740.00 for possession of the rental unit from April to September.

Based on the subsidy letter, I find it was understood that E.M. would pay \$1,108.00 for possession of the rental unit starting in October.

Given the testimony of E.M., I find E.M. has remained in possession of the rental unit despite residing at another location since September 30, 2019. I find this given the

following. I am not satisfied the Landlord was aware E.M. had vacated the rental unit. The Agent testified that the Landlord was not aware. E.M. only left a voice message for the Landlord about the automatic withdrawals for rent. E.M. testified the voice message was never returned. The parties agreed E.M. still has the keys to the rental unit. E.M. testified that he has been going back to the rental unit to pick up belongings, dispose of belongings, clean and fix damage in the unit.

Given that E.M. has been in possession of the rental unit from September to November, E.M. is required to pay the fee associated with possession of the rental unit. I find E.M. was required to pay \$740.00 for September and \$1,108.00 for each of October and November. Given the testimony of the parties, I find E.M. did not pay these amounts. I find the Landlord is entitled to recover these amounts.

Given E.M. has not paid the fee for possession of the rental unit since September, and given E.M. no longer resides at the rental unit, the licence to occupy is ended as of the date of this decision.

As the Landlord was successful in this application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to monetary compensation in the amount of \$3,056.00. Pursuant to section 72(2) of the *Act*, the Landlord is permitted to keep the \$425.00 security deposit towards the outstanding rent for September. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order in the amount of \$2,631.00.

### Conclusion

The Landlord is entitled to an Order of Possession effective two days after service of the Order. This Order must be served. If E.M., as an occupant of the rental unit, does not vacate the rental unit in accordance with the Order, the Order may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to monetary compensation in the amount of \$3,056.00. The Landlord is permitted to keep the \$425.00 security deposit towards the outstanding rent. I issue the Landlord a Monetary Order in the amount of \$2,631.00. This Order must be served on E.M. and, if E.M. does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 22, 2019

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Residential Tenancy Branch