



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding METCAP LIVING MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This application was originally made under the Direct Request process which is an Ex-Parte process based on paper submissions only. As such the submissions must be complete and have no ambiguities. The Landlord's application was mailed by regular mail to the Tenant which is not one of the ways an Applicant can serve a Respondent the hearing package. Consequently due to the incorrect service of the hearing documents the adjudicator adjourned the application to a participatory hearing on today's date.

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession, a Monetary Order for unpaid rent and to recover the filing fee for this proceeding

The Landlord's agent said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on September 24, 2019. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

### Background and Evidence

This tenancy started in July 1, 2019 as a 1 year fixed term tenancy with an expiry date of June 30, 2020. Rent is \$1,750.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$875.00 on June 15, 2019.

The Landlord's agent said that the Tenant had unpaid rent of \$2,350.00 up to August 2019, when it was not paid the Landlord's agent mailed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 8, 2019 to the Tenant on August 8, 2019. The Landlord said the Tenant is living in the unit and they are requesting to end the tenancy as soon as possible. The Landlord said at the present time the Tenant has \$4,000.00 in unpaid rent. The Landlord said the Tenant has made some payments but \$800.00 is unpaid for September 2019 and \$1,750.00 for each month of October and November 2019 are unpaid. The Landlord requested a monetary order to \$4,000.00 of unpaid rent.

The Landlord also sought to recover the \$100.00 filing fee for this proceeding.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 5 days after it is mailed, or on August 13, 2019. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 18, 2019.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

Further, as the Tenant has not paid the overdue rent and has not applied for dispute resolution; I find that the Landlord is entitled to recover unpaid rent for August through to November 2019 in the amount of \$4,000.00.

As the Landlord has been partially successful in this matter, they are also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 4,000.00	
Recover filing fee	\$ 100.00	
Subtotal:		\$4,100.00
Less the security deposit:		\$ 875.00
Balance Owing		\$ 3,225.00

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$3,225.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: November 26, 2019

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Residential Tenancy Branch