



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, OPRM-DR

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on January 29, 2020, in which the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on January 17, 2020 (the "January Notice") as well as recovery of the filing fee.

This hearing originally convened as a result of a Landlord's Application for an Order of Possession by way of the Direct Request proceeding pursuant to section 55(4) of the *Residential Tenancy Act*. The Adjudicator considering the Landlord's Application found it to be incomplete and adjourned the Landlord's Application to a participatory hearing.

The participatory hearing was scheduled for teleconference before me at 9:30 a.m. on this date. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was also assisted by legal counsel.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the January Notice?
2. Is the Landlord entitled to monetary compensation for unpaid rent?
3. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord testified as follows. He stated that the tenancy began October 2017. Monthly rent is \$1,100.00 payable on the 15<sup>th</sup> of the month.

The Landlord testified that the Tenant failed to pay the January rent on January 15, 2020. The Landlord testified that he hired a process server and the Tenant was personally served the January Notice on January 17, 2020. (A copy of the Proof of Service was provided in evidence and which confirmed the Tenant was served the Notice on January 17, 2020.)

The Landlord testified that although on January 17, 2019 the Tenant made a payment (within three days of receipt of the Notice) the funds received were for the December 2019 rent, not the January rent.

The Landlord further testified that the Tenant paid the January 2020 rent on February 19 and 20, 2020, and paid the February 2020 rent on March 19 or 20, 2020. The Tenant failed to pay the March 2020 rent.

The Landlord's counsel submitted that on January 17, 2020, the date the Tenant was served the January Notice, the December and January rent were both outstanding. Counsel advised that at that time the process server served two 10 Day Notices for Unpaid rent: one for December 2019 (the "December Notice") and one for January's rent (the January Notice). Counsel further advised that when the two Notices were served, the Tenant paid the December rent (on January 17, 2020), such that the

December notice was no longer valid; however, the Tenant failed to pay the January rent until February 2020.

In response to the Landlord's submissions the Tenant testified as follows. The Tenant confirmed that his rent is due on the 15<sup>th</sup> of every month. The Tenant further testified that he pays his rent by cheque but claimed he paid his December 2019 rent in cash.

The Tenant further testified that he paid his January rent on January 20, 2020. He stated that he paid his rent late as the Landlord failed to fix a leak at the rental unit. The Tenant also stated that he paid his February rent on February 20, 2020 and his March rent on March 17, 2020.

The Tenant failed to provide any documentary evidence to support his testimony. He stated that he does not have a computer and was not able to process any evidence.

The Tenant stated that when he was served with the January Notice, he was only served the January Notice not two as the Landlord and the Landlord's counsel claimed.

### Analysis

After considering the testimony and evidence before me, and on a balance of probabilities I find as follows.

I find the Tenant was obligated to pay rent in the amount of \$1,200.00 on the 15<sup>th</sup> of each month.

I accept the Landlord's testimony that the Tenant failed to pay the December 2019 and January 2020 rent when due. I further accept the Landlord's testimony that he retained legal counsel and hired a process server to serve a Notice to End Tenancy on the Tenant. While the normal practise is to include the total amount of rent due on one such Notice to End tenancy, I accept the Landlord's counsel's submissions that they prepared a separate Notice to End Tenancy for December 2019 and January 2020 and had both the December notice and the January served on the Tenant on January 17, 2020.

The Tenant stated that he normally paid his monthly rent by cheque, but paid his December 2019 rent in cash. He did not provide any documentary evidence to support his testimony.

The Tenant claimed he paid the January 2020 rent on January 20, 2020; he confirmed he held back his rent as the Landlord failed to fix a leak at the rental unit.

As discussed during the hearing the Tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

**Rules about payment and non-payment of rent**

**26** (1)A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are only four occasions when a Tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenant had no such legal authority to withhold rent.

I therefore find that the Tenant failed to pay the January rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*.

I accept the Landlord's testimony that he served the January Notice on the Tenant on January 17, 2020. Although the Tenant paid \$1,200.00 to the Landlord on January 20, 2020, I find that payment applied to the December 2019 rent. I therefore find that the Tenant did not pay the outstanding January 2020 rent and did not apply to dispute the January Notice within the five days required by section 46(4) and is therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the January Notice.

As such, and pursuant to sections 46 and 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

**As discussed during the hearing, the Order of Possession is not enforceable during the Provincial State of Emergency pursuant to section 4(3) of the *Residential Tenancy (Covid-19) Order* which reads as follows:**

**(3) Despite section 84 of the *Residential Tenancy Act*, a tenant or landlord must not file an order of possession in the Supreme Court of British Columbia unless the order of possession was granted under section 56 or 56.1 of the *Residential Tenancy Act*.**

I accept the Landlord's evidence that the Tenant failed to pay the December 2019 rent. Although he made subsequent rent payments, standard accounting practices provide that payments are applied to the oldest debt. As such, I find the Tenant owes \$1,100.00 in outstanding rent for March 2020. I therefore find, pursuant to sections 67 and 72 that the Landlord is also entitled to monetary compensation in the amount of **\$1,200.00** representing outstanding rent for March 2020, in addition to the \$100.00 filing fee. The Landlord is granted a Monetary Order in the amount of **\$1,200.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

### Conclusion

The Landlord's Application for an Order of Possession and monetary compensation based on the January Notice is granted. The Landlord is also entitled to recover the filing fee.

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 21, 2020

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Residential Tenancy Branch