



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, OPRM-DR, FFL

### Introduction

The landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on February 27, 2020 seeking an order of possession for the rental unit, a monetary order to recover the money for unpaid rent, and to recover the filing fee for the Application.

This participatory hearing was convened after the issuance of a March 24, 2020 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord’s application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord’s application to a participatory hearing as they were not satisfied with the completion of the tenancy agreement.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on May 14, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord gave the tenants notice of this dispute resolution hearing by registered mail. Copies of the Canada Post receipts and tracking sheets with signatures were submitted by the landlord as proof of delivery to each tenant on April 11, 2020.

The tenant had proper notice of this participatory hearing and did not attend.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord submitted a copy of the Residential Tenancy Agreement. This shows the start of tenancy date was April 15, 2017. The rent was \$1725.00 per month payable on the first of each month. A security deposit amount of \$800.00 was paid on March 24, 2017.

The agreement as submitted does not bear the signatures of either party. The landlord spoke to this in the hearing and explained this was due to the long distance between the tenant and the landlord. They stated the tenant had a copy of the agreement and was aware of the terms therein.

The landlord applied for an order of possession pursuant to the 10 Day Notice issued to the tenant on January 22, 2020. This was for the unpaid rent amount -- \$8754 -- that was due on January 1, 2020. A process server gave this notice to the tenant in person, and the landlord submitted a 'Proof of Service' document to show this was on January 22, at 6:50 p.m. A text message from the tenant the following day shows the tenant's acknowledgement of this service.

The landlord also applied for a monetary order for \$10,522.00. The landlord's 'Monetary Order Worksheet' shows the amounts of \$1,725.00 for each of September and October 2019, and \$1,768.00 for November 2019 to January 2020. This total is \$8,754.00 up to February 2020.

The amount of \$1,768.00 from November 2019 onwards represents a rent increase. The landlord stated the tenant knew about this rent increase. The same process server who gave the 10 Day Notice gave notice of the rent increase three months in advance as required by the *Act*.

In the hearing, the landlord amended the claimed amount to include February – May 2020 and stated that the tenant is occupying the rental unit. This brings the total claimed amount to \$15,826.00.

The tenant did not attend the hearing and provided no documentary evidence in this matter.

### Analysis

I have reviewed the copy of the tenancy agreement. In combination with the landlord's oral testimony on its' terms and the conditions of how it was started with the tenant, I am satisfied that the agreement existed and both parties knew the terms and conditions therein. Based on the testimony of the landlord, and the proof of an agreement between the parties, I find the rent agreement was in place and clearly stated the amount and schedule for payment.

With no evidence to the contrary, I am satisfied the landlord advised the tenant of a notice of rent increase within the timeline set out in the *Act*. I accept the landlord's evidence that this information was conveyed to the tenant via a process server.

Section 46 of the *Act* states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the undisputed submissions by the landlord, I find a process server gave the 10 Day Notice to the tenant on January 22, 2020. The tenant failed to pay the rent owing by January

27, 2020, within the five days granted under section 46(4) of the *Act*. There is no evidence before me that the tenant disputed the 10 Day Notice within the five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, February 2, 2020. In the hearing, the landlord stated that the tenant is still in the rental unit.

The evidence of the landlord on the monetary claim is not disputed.

I find that the tenant is obligated to pay \$15,826.00, as per the tenancy agreement.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$15,926.00, for rent owed from September 2019 to May 2020, and recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: May 26, 2020

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Residential Tenancy Branch