



# 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

This hearing dealt with an Application for Dispute Resolution by Direct Request that was adjourned to a participatory hearing. The Landlord filed their Application under the *Residential Tenancy Act* (the “Act”), seeking:

- Unpaid rent;
- An Order of Possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. No one attended the hearing on behalf of the Tenant. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As no one attended the hearing on behalf of the Tenant, I confirmed service of these documents as explained below.

The Landlord testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and notice of the participatory hearing, as well as their documentary evidence, was personally served on the Tenant between March 25, 2020 – March 27, 2020. Although personal service of documents has currently been suspended by the Residential Tenancy Branch (the “Branch”) in response to COVID-19, sections 71 (2) (b) and 71 (2) (c) of the *Act* state that I may find that a decision is sufficiently served for the purposes of the *Act*, regardless of whether it was served in accordance with sections 88 or 89 of the *Act*. Based on the Landlord’s affirmed and uncontested testimony, I am satisfied that the Tenant personally received the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and notice of the participatory hearing, as well as the Landlord’s documentary evidence, on or before March 27, 2020. As a result, I find that the Tenant was sufficiently served with

these documents for the purpose of the *Act* on March 27, 2020, in accordance with sections 71 (2) (b) and 71 (2) (c) of the *Act*.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

### Preliminary Matters

#### Amendment

At the outset of the hearing the Landlord stated that the amount of rent owing since the Application was filed has increased to \$2,600.00 and requested to amend their Application accordingly.

Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made, the Application may be amended at the hearing. I therefore amended the Application to include the additional outstanding rent owed, pursuant to Rule 4.2 of the Rules of Procedure.

#### Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid rent pursuant to sections 26 and 67 of the *Act*?

Is the Landlord entitled to an Order of Possession for the rental unit pursuant to sections 46 (5) and 55 (2) (b) of the *Act*?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

#### Background and Evidence

The Landlord stated that \$1,000.00 in rent is due on the first day of each month under the current tenancy agreement and that when the Tenant failed to pay as required on

February 1, 2020, a 10 Day Notice was posted to the door of the rental unit on February 19, 2020.

The 10 Day Notice in the documentary evidence before me is signed and dated February 19, 2020, has an effective date of February 29, 2020, and states that as of February 1, 2020, the Tenant owed \$1,000.00 in outstanding rent.

Although the address for the Tenant on the 10 Day Notice is the same as the address for the Landlord, and does not contain a unit number, the Landlord stated that the Tenant rents the self-contained basement suite and they live in the upper portion of the home.

The Landlord stated that since the 10 Day Notice was served, the Tenant has only made the following rent payments:

- \$900.00 on March 16, 2020; and
- \$500.00 on April 21, 2020.

The Landlord stated that as a result, the Tenant currently owes \$2,600.00 in outstanding rent for the period of February 1, 2020 – May 31, 2020.

The Landlord requested that an Order of Possession be granted as soon as possible as the full amount of rent on the 10 Day Notice was not paid within 5 days, several additional months of rent are now outstanding, and no application seeking to dispute the 10 Day Notice has been filed with the Branch by the Tenant.

### Analysis

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

Neither a Tenant nor an agent acting on their behalf attended the hearing to present any evidence or testimony for my consideration in relation to the payment of rent or any right under the *Act* that the Tenant may have had to withhold or deduct rent. As a result, I accept the Landlord's undisputed and affirmed testimony that rent in the amount of \$1,000.00 is due on the first day of each month and that rent in the amount of \$2,600.00 remains outstanding. The Landlord is therefore entitled to \$2,600.00 for outstanding rent owed.

The Landlord testified that the 10 Day Notice was posted to the door of the Tenant's rental unit on February 19, 2020, in the presence of a witness, and provided me with a copy of a witnessed and signed Proof of Service document in support of this testimony. As a result, I am satisfied that the 10 Day Notice was served as described above, and I find that the Tenant was therefore deemed served with the 10 Day Notice on February 22, 2020, three days after it was posted to the door of the rental unit in accordance with section 90 (c) of the *Act*.

As there is no evidence before me to the contrary, I am satisfied based on the Landlord's testimony that no amount of rent was paid and no application for dispute resolution was filed by the Tenant in relation to the 10 Day Notice, within 5 days of service of the 10 Day Notice. As a result, I find that the Tenant was conclusively presumed to have accepted the 10 Day Notice and was required to vacate the rental unit by the corrected effective date, March 3, 2020, pursuant to sections 46 (5), 53 (1) and 53 (2) of the *Act*.

Pursuant to section 68 of the *Act*, I amend the 10 Day Notice to include "Basement Suite" in the rental unit address.

Pursuant to section 55 (2) (b) of the *Act*, I find that the Landlord is entitled to an Order of Possession for the rental unit **two (2) days after service of the Order on the Tenant**.

As the Landlord was successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. Pursuant to section 67 of the *Act*, the Landlord is therefore entitled to a Monetary Order in the amount of \$2,700.00; \$2,600.00 for outstanding rent and \$100.00 for recovery of the filing fee.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$2,700.00**. 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 14, 2020

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Residential Tenancy Branch