



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Peninsula Estates Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order of possession for unpaid rent, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated December 12, 2019 ("10 Day Notice"); and a monetary order for unpaid rent in the amount of \$8,644.00, retaining the security deposit to apply to this claim; and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, G.D. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on June 18, 2020. The Landlord provided a Canada Post tracking number and a witness's proof of service as evidence of service. The Agent said

that she also emailed the hearing documents to the Tenant, but had no response from him to either means of service. Based on the evidence before me overall on this matter, I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

### Preliminary and Procedural Matters

The Agent provided the Parties' email addresses in the Application and confirmed them in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

### Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

### Background and Evidence

The Agent submitted a tenancy agreement which set out the following details of the tenancy. The Agent confirmed these details in the hearing: the periodic tenancy began on November 15, 2019, with a monthly rent of \$1,524.00, due on the first day of each month. The Tenant paid the Landlord a security deposit of \$762.00, and no pet damage deposit.

The Agent said that she served the Tenant with a 10 Day Notice that was signed and dated December 12, 2019, and it had the rental unit address and was served by posting it on the door on December 12, 2019. The Landlord submitted a proof of service of this document that confirmed these details. The 10 Day Notice had an effective vacancy date of December 28, 2019.

The Agent said that the Tenant paid half of his rent owing in November 2019, and \$500.00 of December's rent, and that he has not paid any rent since the partial payment in December 2019.

The following table sets out the amount of rent paid and owing by the Tenant to the Landlord throughout the nine-month tenancy.

	MONTH	RENT	AMOUNT PAID	AMOUNT OWING
1	November 2019	\$1524.00	\$762.00	\$762.00
2	December 2019	\$1524.00	\$500.00	\$1024.00
3	January 2020	\$1524.00	\$0.00	\$1524.00
4	February 2020	\$1524.00	\$0.00	\$1524.00
5	March 2020	\$1524.00	\$0.00	\$1524.00
6	April 2020	\$1524.00	\$0.00	\$1524.00
7	May 2020	\$1524.00	\$0.00	\$1524.00
8	June 2020	\$1524.00	\$0.00	\$1524.00
9	July 2020	\$1524.00	\$0.00	\$1524.00
			<b>TOTAL</b>	<b>\$12,454.00</b>

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

### **Unpaid Rent Owing**

The Agent said the amount of rent the Tenant owed when she applied for dispute resolution is less than what is currently owing. The Agent had claimed \$8,644.00, in the Application, however, the current amount of rent owing is \$12,454.00 as detailed above; the Tenant has not paid any rent since December 2019, and he continues to live in the rental unit. The Agent requested that the Landlord's Application for a monetary order be increased to this amount to reflect the increasing amount of this debt.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid; therefore, he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord's error in the original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord

from the Tenant from \$8,644.00 to \$12,454.00.

### **Order of Possession**

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**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.

. . .

(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.

[emphasis added]

The Tenant paid \$500.00 towards the rent owing after he received the 10 Day Notice, but he did not pay the amount owing in full and he did not apply for dispute resolution to cancel the 10 Day Notice. As such, according to section 46(5) of the Act, 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 by that date.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was deemed served with the 10 Day Notice on December 15, 2020, three days after it was posted on the rental unit door.

Section 26 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. In the hearing, the Agent said that the Landlord was owed \$12,454.00 in unpaid rent as of July 2, 2020.

The 10 Day Notice was signed, dated, had the rental unit address, it was served by posting on the rental unit door, and had an effective vacancy date of December 28, 2019. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and he did not provide any documentary evidence establishing that he had a right under the Act to deduct all or a portion of the \$12,454.00 in rent owed for the nine months prior to the hearing. Therefore, I find the Landlord's Application for an order of possession is granted, pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed, and the undisputed evidence before me is that the Tenant has not paid full rent since the tenancy started in November 2019, the order of possession will be **effective two days after service** of the order on the Tenant.

Based on the evidence and authorities before me, I find that the Landlord is successful in their Application, as I find that the Tenant breached sections 26 and 46 of the Act by not paying the full rent owing to the Landlord from November 2019 through July 2020. Accordingly, I grant the Landlord a monetary award of \$12,454.00 in unpaid rent, pursuant to section 67 of the Act. I also award the Landlord recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit in partial satisfaction of the Landlord's monetary award. The Landlord is authorized to retain the Tenant's security deposit of \$762.00, and they are awarded a Monetary Order for the remaining amount owing of **\$11,792.00** against the Tenant.

### Conclusion

The Tenant has not paid rent in full for the full nine-month tenancy, therefore, the Landlord's Application for an order of possession is granted. Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two 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, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord's Application for recovery of unpaid rent is successful in the amount of \$12,454.00. Further, the Landlord is awarded recovery of the \$100.00 filing fee for this Application from the Tenant.

The Landlord is authorized to keep the Tenant's security deposit of \$762.00 in partial satisfaction of this monetary award. I grant the Landlord a Monetary Order under section 67 of the Act from the Tenant in the amount of **\$11,792.00** for the remainder of the monetary award owing by the Tenant to the Landlord.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 14, 2020

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Residential Tenancy Branch