



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1065423 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FFL

### Introduction

On July 8, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession for the rental unit; a monetary order for unpaid rent; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The property owners (“the Landlord”) and the Tenant attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord purchased the residential property in February 2016 and the Tenant was already living on the property. The Tenant testified that her tenancy began in

September 2011 and is currently on a month to month basis. Both parties agreed that rent in the amount of \$850.00 is to be paid to the Landlord each month.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 23, 2020 ("the 10 Day Notice") in person on June 23, 2020. The 10 Day Notice has an effective date of July 2, 2020.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$6,350.00 which was due on June 1, 2020. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant testified that he received the 10 Day Notice and did not dispute it.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice. The Landlord testified that he has not received any rent payments since the 10 Day Notice was issued.

The Landlord testified that the Tenant now owes \$8,050.00 in unpaid rent including August 2020.

The Tenant confirmed that she has not paid any rent and she confirmed that she owes the Landlord \$8,050.00 in rent.

The Landlord seeks an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$8,050.00.

### Analysis

I note that on March 30, 2020 the Minister of Public Safety and Solicitor General declared a state of emergency because of the COVID -19 pandemic. The Ministerial Order M089 provides that a Landlord must not issue a notice to end tenancy while the Order is in effect. The Order applies from March 30, 2020 and ends on the date on which the state of emergency declared on March 18, 2020 expires or is cancelled.

Ministerial Order M195 issued June 24, 2020, pursuant to the State of Emergency declared on March 18, 2020 provides that affected rent is rent that is due and payable during the emergency period / state of emergency (March 18, 2020 on onward) The Order provides that Landlords cannot evict Tenants for unpaid rent relating to affected rent; however, the Order no longer prohibits a Landlord from issuing a 10 Day Notice to

End Tenancy for Unpaid Rent or Utilities if the arrears were accrued prior to March 18, 2020.

Section 55 (2)(b) of the Act provides that a Landlord may request an order of possession of a rental unit by making an application for dispute resolution when a notice to end the tenancy has been given by the Landlord, and the Tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. In the circumstances described in 55 (2)(b), the director may, without any further dispute resolution process grant an order of possession, and if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities I make the following findings:

I find that the Landlord issued the 10 Day Notice to the Tenant in person on June 23, 2020 while Ministerial Order M089 was still in effect.

I find that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 23, 2020 is not a valid or effective notice and it is therefore cancelled.

If the Landlord wants to pursue ending the tenancy due to unpaid rent the Landlord will need to serve the Tenant with a new 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

With respect to unpaid rent, the Tenant agreed that she owes the Landlord the amount of \$8,050.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$8,150.00**. 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. However, I caution the Landlord that pursuant to Division 1 of the Covid Regulation (Ministerial Order 449) the payments for rent owed for the period of the state of emergency are subject to the required terms of a repayment plan for affected rent. The Landlord must present the payment plan to the Tenant. If the Landlord requires

more details on how to set up the repayment plan, they should visit the RTB Website or contact the RTB and speak to an Information Officer.”

### Conclusion

The Landlords request for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 23, 2020 is denied.

The Landlords request for a monetary order for unpaid rent and the filing fee is granted. I grant the Landlord a Monetary Order in the amount of **\$8,150.00**.

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: August 11, 2020

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Residential Tenancy Branch