



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0953788 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** FFL OPC MNRL-S

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's counsel, RK, attended the hearing by way of conference call, the tenant did not. I waited until 11:15 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's counsel, the landlord's witnesses, and I were the only ones who had called into this teleconference.

Counsel confirmed that the tenant was served with the landlord's application for dispute resolution hearing package on September 10, 2020 by way of registered mail. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's application and evidence on September 15, 2020, five days after mailing. The tenant did not submit any written evidence for this hearing.

Counsel confirmed at the beginning of the hearing that the tenant had moved out on October 2, 2020, and that the landlord no longer required an Order of Possession. Accordingly, this portion of the landlord's application was cancelled.

Although the landlord had applied for a monetary Order of \$6,200.00 in their initial claim, counsel stated that the landlord did not receive the \$300.00 monthly rent subsidy

for the months of August and September 2020. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. In this case, I find that it can be reasonably anticipated that the tenant owes \$2,000.00 in monthly rent less any applicable subsidies. On this basis, I have accepted the landlord's request to amend their original application from \$6,200.00 to \$6,800.00 to reflect the unpaid rent that was owed at the time this hearing was convened.

### **Preliminary Issue – Landlord's Application for Substituted Service**

Counsel for the landlord made an oral request for a substituted service order under section 71 of the *Act* to enable the landlord to serve the tenant with the requested monetary order by way of email as the tenant had moved out, and failed to provide the landlord with a forwarding address.

RTB Rules of Procedure states the following:

#### ***3.4 If a respondent avoids service***

*If a respondent appears to be avoiding service or cannot be found, the applicant may apply to the Residential Tenancy Branch directly or through a Service BC Office for an order for substituted service.*

*An application for substituted service must show that the applicant made reasonable attempts to serve the respondent or provide evidence that shows the other party is unlikely to receive material if served according to the Act.*

*An application for substituted service that is made at the hearing may result in an adjournment.*

I find that at the time this request was made, the landlord had yet to be granted any orders. Although the landlord's belief is that the landlord would be unable to serve the tenant in accordance with the *Act*, I find the landlord's request for a substituted service order to be premature. Accordingly, I dismiss the landlord's application for substituted service with leave to reapply.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover their filing fee for this application?

### **Background and Evidence**

The landlord provided regarding the following facts. This tenancy began on June 1, 2019, and ended on October 2, 2020. Monthly rent was set at \$2,000.00, payable on the first of every month. The landlord collected a security deposit of \$1,000.00 and a pet damage deposit of \$500.00 for this tenancy, which counsel states was returned to the tenant in full.

The landlord is seeking a monetary order the outstanding rent for this tenancy which amounts to \$6,800.00. The landlord provided a detailed spreadsheet of the amounts owed for the period of April 1, 2020 through to September 1, 2020 in their evidentiary materials.

### **Analysis**

**Section 26** of the Act, in part, states 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.

The landlord provided undisputed evidence that the tenant failed to pay \$6,800.00 in outstanding rent for this tenancy. On this basis, I allow the landlord a monetary order in the amount of \$6,800.00 to recover the rent owed for this tenancy.

As the landlord was successful with his application, I allow the landlord to recover the filing fee paid for this application.

### **Conclusion**

The landlord cancelled their application for an Order of Possession as the tenant had moved out.

I allow the landlord's monetary claim of \$6,800.00 for unpaid rent plus \$100.00 for the filing fee. The landlord is granted a Monetary Order in the amount of \$6,900.00. 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: October 16, 2020

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Residential Tenancy Branch