



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding M&F Horne Holdings Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPRM-DR, OPR-DR, FFL**  
                                 **CNR, LRE, FFT**

### **Introduction**

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the *Residential Tenancy Act* (“Act”).

The landlord applied for:

- An order of possession and a monetary order for unpaid rent, by direct request pursuant to sections 46, 55 and 67;
- An order of possession for unpaid rent by direct request pursuant to sections 46 and 55; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46;
- An order to suspend a landlord’s right to enter the rental unit pursuant to section 70; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord was represented at the hearing by co-owner, FH (“landlord”). The tenant did not attend the hearing scheduled for 11:00 a.m. although I left the teleconference hearing connection open throughout the hearing which concluded at 11:20 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference monitoring system that the landlord and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of

that party, or dismiss the application with or without leave to re-apply. Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered. The tenant did not attend the hearing which was scheduled by conference call at 11:00 a.m. As she did not attend, she did not present evidence regarding the merits of her claim for me to consider. Therefore, the tenant's application seeking an order to suspend the landlord's right to enter the rental unit and to recover the filing fee are dismissed without leave to reapply.

The landlord testified she served the tenant at her residential address with the Notice of Dispute Resolution Proceedings package by registered mail on October 6, 2020. The tracking number for the mailing is recorded on the cover page of this decision. The landlord also served the tenant with an amendment by registered mail on the same day. A copy of the tracking information was also provided as evidence. The landlord testified that everything sent to the tenant was returned to the landlord as unclaimed by Canada Post. I am satisfied the tenant is deemed served with the Notice of Dispute Resolution Proceedings package on October 11, 2020, five days after sending the documents by registered mail on October 6<sup>th</sup>, in accordance with sections 89 and 90 of the Act.

#### Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be upheld or cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

#### Background and Evidence

The landlord gave the following undisputed testimony. The month to month tenancy began on May 15<sup>th</sup>, 2019 with rent set at \$1,750.00 per month payable on the first day of each month. A security deposit of \$875.00 was collected from the tenant which the landlord continues to hold.

As of August 2020, the tenant was up to date in paying her rent although it was late most months. On September 3, the tenant paid \$875.00, half of the September rent.

On September 20<sup>th</sup> at 10:00 a.m., the landlord served the tenant with a One Month Notice To End Tenancy for Cause by posting it to the tenant's door. A witnessed, signed proof of service document was filed as evidence. The landlord testified she also sent a copy of the Notice to the tenant by registered mail on September 20<sup>th</sup>.

A copy of the signed and dated notice was provided as evidence. It states the tenant failed to pay rent in the amount of \$875.00 due on September 16, 2020. It provides an effective date of September 27, 2020. The landlord testified she does not know if the tenant has moved out of the rental unit, however she did a drive-by and noted the tenant still has possessions on the deck of the rental unit.

The landlord testified that the remainder of September rent was never paid, nor was October or November. The tenant is currently in arrears in rent of (\$875.00 + \$1,750.00 + \$1,750.00 = \$4,375.00.) The landlord has not received any rent money since September 3<sup>rd</sup>.

### Analysis

I find the tenant is deemed served with the notice to end tenancy on September 23, 2020, three days after the landlord posted it to her door in accordance with sections 88 and 90 of the Act.

The tenant did not attend the hearing to dispute the landlord's evidence. Based on the landlord's undisputed evidence I find rent was due on the first day of each month and the tenant did not pay full rent for the month of September when it was due on September 1<sup>st</sup> as required by section 26 of the Act. I find that when the landlord served the notice to end tenancy, the tenant was in arrears of September rent in the amount of \$875.00. I uphold the landlord's notice to end tenancy signed on September 19, 2020.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- a. the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- b. the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the landlord's notice to end tenancy and find it complies with section 52 of the Act with the exception of the effective date. In accordance with section 53 of the Act, the effective date stated on the notice is corrected to October 3, 2020, 10 days after

the notice was deemed served. As the effective date has passed, the landlord is entitled to an order of possession effective 2 days after service upon the tenant.

I find the tenant to be overholding as defined by section 57 of the Act. Section 57(3) states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Rule 4 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated. If sought at the hearing, such an amendment need not be submitted or served. Section 64(3) allows the director to amend an application. The landlord has provided undisputed evidence that the tenant did not pay rent for half of September, any of October or November. I allow the landlord's application to amend her claim to include rent for October and November. Pursuant to section 67 of the Act, I award the landlord a monetary order for those arrears in rent.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of \$875.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
Half of September rent	\$875.00
October rent	\$1,750.00
November rent	\$1,750.00
Filing fee	\$100.00
Less security deposit	(\$875.00)
<b>Total</b>	<b>\$3,600.00</b>

#### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$3,600.00**.

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: November 20, 2020

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Residential Tenancy Branch