



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Coronet Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      For the tenant: CNR, MNDC, RP, FF  
For the landlord: OPR, MNR, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for the following:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- compensation for a monetary loss or other money owed;
- an order requiring the landlord to make necessary repairs to the rental unit; and
- to recover the cost of the filing fee.

The landlords applied for the following:

- an order of possession of the rental unit pursuant to the Notice served to the tenant;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

The landlord's agent (landlord) attended the hearing; the tenant did not attend.

The landlord said that he served the tenant with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on October 19, 2020.

Based upon the landlord's undisputed submissions, I accept the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

Thereafter the landlord was provided the opportunity to present his evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Preliminary and Procedural Matters

Despite having his own hearing scheduled for 11:00 a.m. on December 17, 2020, and the landlord's application and notice of hearing, the tenant failed to attend the hearing.

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

#### **7.3 Consequences of not attending the hearing**

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.

#### **7.4 Evidence must be presented**

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 the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenant, I order his application dismissed, **without leave to reapply**.

The hearing proceeded on the landlord's request for an order of possession of the rental unit and a monetary order for unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent, a monetary order for unpaid rent, and recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of August 15, 2019, a fixed term through August 31, 2021, monthly rent of \$2,500, due on the 1<sup>st</sup> day of the month, and a security deposit of \$1,250 being paid by the tenant to the landlord/owner.

The landlord submitted evidence that on October 2, 2020, he served the tenant with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$3,062.50 owed as of October 1, 2020. The effective vacancy date listed on the Notice was October 19, 2020. The Notice was filed into evidence, along with a signed, witnessed proof of service of the Notice.

The tenant did file his application to dispute the Notice, but was not present at the hearing.

The landlord submitted that since the Notice was issued to the tenant, the tenant has made one payment of \$1,600 and as of the day of the hearing, the tenant owed a total rent deficiency of \$6,750.

The landlord also said that the tenant has rented out the bedrooms in the residential property and that he turned off the power and internet on November 20, 2020, leaving the occupants without power.

Analysis

**Order of possession of the rental unit –**

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and

tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenant that he had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenant was served a 10 Day Notice, that the tenant owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenant filed an application for dispute resolution in dispute of the Notice, he did not attend the hearing to offer rebuttal evidence to prove the rent was paid.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, such as bailiff fees, are recoverable from the tenant.

### **Monetary order –**

I also find that the landlord submitted sufficient evidence to show that the tenant owed, but did not pay, the required monthly rent due under the written tenancy agreement, leaving a rent deficiency of \$6,750 through December 2020.

I therefore find the landlords are entitled to a monetary award of \$6,850, comprised of unpaid rent of \$6,750 through December 2020, and the \$100 filing fee paid by the landlords for this application.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$6,850.

Should the tenant fail to pay the landlords this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenant is advised that costs of such enforcement are recoverable from the tenant.

The landlord is also permitted to use the tenant's security deposit in partial satisfaction of their monetary award, and if they so choose, the monetary order is reduced in that amount.

### Conclusion

The tenant's application is dismissed without leave to reapply as he failed to attend the hearing.

The landlords' application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted.

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: December 17, 2020

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Residential Tenancy Branch