



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, OPR-DR-PP

### Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was adjourned to a participatory hearing. The Landlord filed under the Residential Tenancy Act (the Act) seeking:

- Unpaid rent; and
- An Order of Possession based on an uncontested 10 Day Notice to End tenancy for Unpaid Rent (the 10 Day Notice).

This hearing also dealt with an amendment to the Application filed with the Branch on November 23, 2020, increasing the amount of the monetary claim for additional unpaid rent.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlord testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the notice of original hearing by direct request, the Notice of Hearing for today's hearing, a copy of the Interim Decision dated September 25, 2020, reconvening the matter as a participatory hearing, and all of the documentary evidence before me from the Landlord, were sent to the Tenant by

registered mail on October 2, 2020, at the rental unit address. The Landlord provided me with the registered mail tracking number, which has been recorded on the cover page for this decision, and the Canada Post website confirms that the registered mail was sent as described above and delivered to a mailbox on October 5, 2020. As a result, I find that the Tenant was deemed served in accordance with section 90(d) of the Act, on October 8, 2020, three days after the registered mail package was delivered to their mailbox, which is a more preferential service date for the Tenant than finding it served the date it was delivered to their mailbox, October 5, 2020 or deeming it received five days after it was mailed, October 7, 2020.

Based on the above, the hearing proceeded as scheduled despite the absence of the Tenant pursuant to rule 7.3 of the Rules of Procedure.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

#### Preliminary Matters

Although the Landlord filed an Amendment to the Application (the Amendment) with the Residential Tenancy Branch (the Branch) on November 23, 2020, increasing the amount of their monetary claim for additional unpaid rent now owed, which they testified was posted to the door of the rental unit and placed in the mailbox for the rental unit on the same date, I find that this amendment was not filed within the timelines set out under rule 4.3 and 4.6 of the Rules of Procedure.

However, rule 4.2 of the Rules of Procedure allows me to amend an Application at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made, which is the circumstance here. As a result, I have amended the Application to increase the amount of the Landlord's monetary claim for unpaid rent.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to unpaid rent?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on May 13, 2018, states that the six month fixed term tenancy began on May 16, 2018, and was set to end on November 15, 2018. Although a vacate clause in the tenancy agreement states that the Tenant was to vacate at the end of the fixed term, the Landlord stated that the tenancy continued on a month to month basis. The tenancy agreement states that rent in the amount of \$1,200.00 is due on the first day of each month but the Landlord stated that rent was increased to \$1,230.00 effective March 15, 2019, by way of a properly served Notice of Rent Increase. A copy of the Notice of Rent Increase was submitted for my review.

The Landlord stated that when the Tenant did not pay \$1,230.00 in rent on September 1, 2020, as required, a 10 Day Notice was posted to the door of the rental unit in the presence of a witness on September 2, 2020. A witnessed and signed proof of service document was submitted by the Landlord in support of this testimony, along with a copy of the 10 Day Notice. Although the Landlord only submitted the first two pages of the 10 Day Notice for my review, they testified that the third page was properly served on the Tenant as required and that there had simply been an error in uploading the third page for my review.

The 10 Day Notice in the documentary evidence before me, signed and dated September 2, 2020, has an effective date of September 12, 2020, and states that it was posted to the door of the rental unit. The 10 Day Notice states that it has been issued because the Tenant failed to pay \$1,230.00 in rent owed on September 1, 2020.

The Landlord stated that although the Tenant paid \$800.00 towards September rent on September 9, 2020, and \$430.00 towards September rent on September 24, 2020, they neither paid the full amount of rent owed within 5 days after being deemed served with the 10 Day Notice, or filed an Application for Dispute Resolution with the Branch seeking to dispute the 10 Day Notice within this same time period. As a result, the Landlord sought an Order of Possession for the rental unit as soon as possible pursuant to sections 46(5) and 55(2)(b) of the Act.

The Landlord also sought \$3,365.00 in outstanding rent currently owed by the Tenant. The Landlord stated that in addition to the above noted rent payments made by the Tenant in September, the Tenant also paid \$930.00 towards October rent on

October 18, 2020, and \$1,025.00 towards November rent over several payment dates in November but has made no further payments and has not paid any rent for December 2020. Although the Landlord stated that a proper repayment plan was entered into with the Tenant for affected rent owed prior to September 1, 2020, as required, a copy of which was submitted for my review, they stated that the Tenant failed to make their first payment of \$125.38 on October 1, 2020, as required. As a result, the Landlord stated that they are now seeking the full amount of rent currently owed, which includes both affected and unaffected rent.

No one appeared at the hearing on behalf of the Tenant to provide any evidence or testimony for my consideration, despite my finding earlier in this decision that the Tenant was deemed served with notice of the hearing, a copy of the Application and the documentary evidence before me from the Landlord on October 8, 2020, well in advance of the hearing.

### Analysis

Section 26(1) 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.

Section 46 of the Act states that 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. It also states that a notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and that a notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

Based on the uncontested documentary evidence and affirmed testimony before me from the Landlord, I am satisfied that rent in the amount of \$1,230.00 was due on September 1, 2020, and that the Tenant failed to pay this amount as required without a right under the Act to deduct or withhold this rent. I am also satisfied that the 10 Day Notice was posted to the door of the rental unit, where I am satisfied that the Tenant still resides as of the date of the hearing, on September 2, 2020. I therefore deem the 10 Day Notice received by the Tenant on September 5, 2020, pursuant to section 90(c) of the Act.

Based on the uncontested documentary evidence and affirmed testimony before me from the Landlord, I am satisfied that the Tenant did not pay the full amount of rent owed according or file an Application with the Branch seeking to dispute the 10 Day Notice by December 10, 2020, as allowable under section 46(4) of the Act.

Based on the above, I therefore find that the Tenant was conclusively presumed to have accepted the end of the tenancy in accordance with the 10 Day Notice and required to vacate the rental unit by the corrected effective date, September 15, 2020, pursuant to sections 46(5) and 53(2) of the Act. Pursuant to sections 55(2)(b) and 68(2)(a) of the Act, I therefore grant the Landlord an Order of Possession for the rental unit effective two days after service on the Tenant.

Based on the uncontested documentary evidence and affirmed testimony before me from the Landlord, I am also satisfied that the Tenant owes \$3,365.00 in outstanding rent. As I find that the tenancy is ended as a result of the 10 Day Notice, I therefore award the Landlord recovery of this amount, including any amounts considered affected rent. Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary Order in the amount of \$3,365.00.

### Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$3,365.00**. 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, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

If the Landlord holds a security deposit or a pet damage deposit or both, section 38(3) of the Act applies and the Landlord may retain one or both deposits towards the above noted amount owed. Any balance remaining owed to the Landlord after such deductions remains enforceable by way of the Monetary Order. Should the amount(s) of the deposit(s) held by the Landlord exceed the amount(s) owed to them by the Tenant as set out above, the remaining balance(s) of the deposit(s) must be dealt with by the Landlord in accordance with the Act.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two (2) 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, this Order

may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Tenant is cautioned that costs of such enforcement are recoverable from the them by the Landlord.

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 4, 2020

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Residential Tenancy Branch