



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTLAND TELFORD LIMITED  
PARTNERSHIP and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR, OPR-DR, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on October 16, 2020, wherein the Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 1, 2020 (the "Notice"), a Monetary Order for unpaid rent in the amount of \$11,480.00 and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 9:30 a.m. on January 19, 2021. Only the Landlord's Representatives, S.C. and T.K. called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 9:51 a.m. Additionally, 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 system that the Landlord's Representatives and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. T.K. testified that they served the Tenant with the Notice of Hearing and the Application on November 3, 2020 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. *Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where

the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of November 8, 2020 and I proceeded with the hearing in their absence.

T.K. testified that the Tenant vacated the rental unit on November 21, 2020 such that an Order of Possession was no longer required.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent?
2. Should the Landlord recover the filing fee?

#### Background and Evidence

A copy of the residential tenancy agreement and Notice of Rent Increase were provided in evidence before me. These documents indicated the following: this tenancy began September 1, 2018; monthly rent was originally \$1,400.00; the Tenant paid a \$700.00 security deposit; and commencing January 1, 2020 the rent was raised to \$1,435.00.

T.K. testified that the Tenant failed to pay the March 2020 rent following which the Landlord issued the Notice. The Tenant did not apply to dispute the Notice and failed to pay the outstanding rent. The Tenant also failed to pay any rent for the remainder of her time in the rental unit from April through November 2020 such that at the time the Tenant vacated the rental unit the sum of \$12,915.00 was outstanding (as the Application was made on October 16, 2020, the Landlord did not include the November rent in their original calculation of rent owing).

S.C. confirmed the Landlord did not receive any rental subsidy or other government funds towards the Tenant's outstanding rent.

The rental unit was re-rented as of January 2021.

### Analysis

After consideration of the Landlord's undisputed testimony and evidence and on a balance of probabilities I find as follows.

Pursuant to the residential tenancy agreement and the Notice of Rent Increase I find the Tenant was obligated to pay monthly rent of \$1,435.00 commencing January 1, 2020. I accept the Landlord's evidence that the Tenant failed to pay rent for March 2020 following which the Landlord issued the Notice. I also accept the Landlord's evidence that the Tenant failed to pay any further sums towards her rental obligations such that at the time the tenancy ended on November 21, 2020 the sum of \$12,915.00 was outstanding for rent.

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated, such as when the amount of rent owing has increased from the time of filing the Application to the hearing date. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

Although the November rent was not initially claimed by the Landlord, I find the Tenant would have reasonably anticipated the Landlord would seek compensation for this month as the Tenant was still in occupation of the rental unit. Accordingly, I amend the Landlord's Application to include a claim for unpaid rent for November 2020.

Section 26 of the *Act* provides that a tenant must pay rent when rent is due. In this case I find the Tenant breached the tenancy agreement and section 26 by failing to pay rent. I therefore find the Landlord is entitled to the sum of **\$12,915.00** for unpaid rent for the nine months of March 2020 through November 2020.

As the Landlord has been successful in this application, I award the Landlord recovery of the filing fee for a total award of **\$13,015.00**.

Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenant's security deposit of \$700.00 towards the amount awarded and I grant the Landlord a

Monetary Order in the amount of **\$12,315.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlord's request for an order of Possession is dismissed without leave as the Tenant has already vacated the rental unit.

The Landlord is granted monetary compensation for unpaid rent for March to November 2020 and recovery of the filing fee, is authorized to retain the Tenant's security deposit, and is granted a Monetary Order for the **\$12,315.00** balance due.

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: January 19, 2021

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Residential Tenancy Branch