



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Middlegate Developments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

**OPR-DR, OPRM-DR, FFL**

### **Introduction**

On November 13, 2020, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

- the landlord sent the Notice of Direct Request Proceeding and the 10 Day Notice to an address that is not the rental address established in the tenancy agreement. The landlord submitted a copy of a typed letter dated October 23, 2020 advising the landlord to use this alternative address; however, I find this letter is not signed by the tenant.
- I find that the landlord did not submit the second page of the 10 Day Notice. In a Direct Request Proceeding, I find I am not able to confirm whether the landlord served the tenant the complete two-page 10 Day Notice as required under section 52 of the *Act*.

I have been delegated authority under the *Act* to consider the landlord's application for:

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

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the 40 minute hearing to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and

was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that on November 14, 2020, the relief manager, KM sent the Notice of Dispute Resolution Proceedings to the tenant via registered mail to the address for service provided by the tenant in an email dated October 23, 2020. The tracking number for the mailing is recorded on the cover page of this decision. The resident manager testified that he received the tenant's address for service on October 23, 2020 at 11:49 a.m. A copy of the email sent by the tenant was provided as evidence. The landlord testified that he spoke to the tenant last night and the tenant confirmed that she received the notice of hearing and that she did not intend on attending the dispute resolution hearing.

The resident manager testified that he also posted a copy of the Notice of Dispute Resolution Proceedings to the tenant's door, the subject rental unit in this proceeding, on November 13, 2020. The posting to the door was witnessed by the relief manager, KM who also provided testimony in this hearing. KM testified that he saw the resident manager post the Notice of Dispute Resolution Proceedings to the tenant's door. Although the Notice of Dispute Resolution Proceedings was not served in accordance with section 89 of the Act, I am satisfied the tenant was deemed served with the Notice of Dispute Resolution Proceedings in accordance with section 71 of the Act. Service is deemed effective five days after sending via registered mail, on November 19, 2020 pursuant to section 90 of the Act.

#### Preliminary Issue

Pursuant to rule 4.2, in circumstances that can be reasonably anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. The landlord sought to increase the monetary order sought to include November and January rent. This amendment was allowed pursuant to rule 4.2 and section 68 of the Act.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession and monetary order for unpaid rent?  
Can the landlord recover the filing fee?

#### Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on September 28, 2019, indicating a monthly rent of \$1,864.00, due on the last day of each month for a tenancy commencing on November 1, 2019;
- A copy of the first page of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 5, 2020, for \$1,864.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of October 16, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 11:20 (a.m. or p.m. not indicated) on October 6, 2020;
- A copy of a Canada Post receipt containing the Tracking Number to confirm the 10 Day Notice was in fact sent to the tenant on October 5, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

The landlord testified that the tenancy agreement was signed by the named tenant, however the tenant moved her step-daughter into the rental unit.

The resident manager, SH testified that in addition to sending the tenant the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities via registered mail, he also posted a copy of it to the tenant's door on October 6, 2020 at 11:20 a.m. This posting to the door was witnessed by the relief manager, KM who testified during this hearing that he saw the resident manager post the notice to the door.

SH, the resident manager testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities posted to the tenant's door had two pages and that both pages were served upon the tenant.

The landlord testified that subsequent to being served with the notice, the tenant has not paid the \$1,864.00 indicated as owing for October rent. The landlord further testified that the tenant also failed to pay rent for November and January. December rent was paid. The tenant is in arrears of rent for the months of October, November and January. The tenant has not filed any Notice of Dispute Resolution Proceedings to dispute the notice to end tenancy, as far as the landlord is aware.

### Analysis

I deem the tenant served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 9, 2020, three days after it was posted to the tenant's door on October 6, 2020 in accordance with sections 88 and 90 of the Act.

Given the undisputed testimony of the landlord, I am satisfied that both pages of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities were served upon the tenant.

Sections 46(4) and (5) of the *Act* state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - a. pay the overdue rent, in which case the notice has no effect, or
  - b. dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
  - a. is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - b. must vacate the rental unit to which the notice relates by that date.

Based on the landlord's undisputed evidence and the Notice before me, I find that the tenant was served with an effective Notice and did not pay the overdue rent or file an application to dispute it within the 5 days. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days ended the tenancy on the effective date of the Notice. In this case, this required the tenant to vacate the premises by October 16, 2020 automatically changed to October 19, 2020, 10 days after the notice is deemed served in accordance with section 53 of the Act. As the tenant has not yet vacated the premises, I find that the landlord is entitled to an Order of Possession effective 2 days after service.

Section 26 of the *Act* is clear, 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. I find that the tenant did not have any right to deduct any portion of the rent. Based on the undisputed evidence before me, I find the tenant was required to pay rent in the amount of \$1,864.00 on the first day of each month for October and November 2020 and January 2021 and she did not do so. I find the landlord is entitled to a monetary order in the amount of **\$5,592.00** (\$1,864.00 x 3 = \$5,592.00).

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.

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 **\$5,692.00**.

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: January 30, 2021

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Residential Tenancy Branch