



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      OPR-DR, MNR-DR, FF

### Introduction and Procedural Matters

This review hearing was convened as the result of the tenant's successful Application for Review Consideration.

This dispute began as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act), via the ex-parte, non-participatory Direct Request process. The landlord applied for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) served to the tenants;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

On October 5, 2020, an adjudicator for the Residential Tenancy Branch (RTB) granted the landlord's application and issued the landlord an order of possession of the rental unit, effective two (2) days after service on either tenant. Additionally, the landlord was granted a monetary order for \$2,500, comprised of \$2,400 for the unpaid monthly rent for September 2020, and \$100 for recovery of the filing fee. That Decision should be read in conjunction with this decision.

The tenant, TF, filed the Application for Review Consideration which resulted in a Decision by an arbitrator with the RTB, on October 21, 2020, granting the tenant a review hearing on the original application for dispute resolution. That Decision should be read in conjunction with this decision.

This was the review hearing and the merits of the landlord's original application were considered.

The landlord and the tenant, TF, attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties made no issue concerning the receipt of the other's evidence or other hearing documents. The landlord provided proof of service of her Application for Dispute Resolution, evidence, and Notice of Hearing (application package), as instructed by the arbitrator in the Decision of October 21, 2020.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

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

#### *Preliminary Issue –*

The landlord listed the tenants' minor children as respondents in her original application. As they are not tenants in this matter, I have excluded their names on the style of cause page and any consideration.

Additionally, TF submitted, without dispute, that the other listed tenant, MS, has vacated the rental unit.

#### Issue(s) to be Decided

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

#### Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on June 1, 2020, monthly rent payable by the tenants is \$2,400, due on the 1<sup>st</sup> day of the month, and a security deposit of \$1,200 was paid by the tenants at the beginning of the tenancy.

The landlord submitted that on September 2, 2020, she served the tenants the Notice, by personal service, or hand delivery, to the tenant, TF, while tenant MS was present. The Notice listed unpaid rent of \$2,400 as of September 1, 2020. The effective vacancy date listed on the Notice was September 15, 2020.

The Notice sets out for the benefit of the tenants that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant has not vacated the rental unit and did not pay the amount listed on the Notice. In addition, the tenant has not paid the monthly rent for the months of October, November, December 2020, and January 2021.

The landlord submitted that the total amount of unpaid monthly rent as of the date of the hearing is \$12,000. The landlord submitted documents amending her monetary claim to this amount.

*Landlord's witness –*

As the tenant was granted this review hearing based upon his claim in his signed Application for Review Consideration that he did not receive the Notice from the landlord, it was necessary to hear from the landlord's witness. The Application for Review Consideration informed the tenant, as applicant, he understood it is a legal offense to provide false or misleading information and evidence to the Residential Tenancy Branch.

Witness, AS, submitted a signed statement and provided affirmed testimony at the hearing that he was with the landlord on the day of the service of the Notice and other subsequent documents related to this dispute. AS testified that he witnessed the landlord hand the Notice to tenant, TF, on September 2, 2020, in the driveway to the rental unit.

*Tenant's response –*

The tenant said he did not receive the Notice.

The tenant acknowledged not paying the monthly rent for the five months since September 2020, as claimed by the landlord; however, he submitted there were alleged

issues within the last two months with the landlord which he believed entitled him to withhold rent.

### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities, while referring to only the evidence relevant to my findings in this Decision:

### Order of Possession-

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 pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

I accept the landlord's and her witness' affirmed testimony and signed statements that the tenant was personally served the Notice on September 2, 2020, owed the rent listed, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, September 15, 2020. I therefore **order** that the tenancy ended on September 15, 2020. The tenant has been overholding since that date.

As a result, I find that the landlord is entitled to an order of possession of the rental unit pursuant to section 55(2) of the Act.

On this basis, I confirm the original Decision of the adjudicator dated October 5, 2020, pursuant to section 82(3) of the Act, and it remains valid and enforceable. Therefore, the order of possession of the rental unit issued on that date also remains valid and enforceable.

The tenant was informed of my decision in the hearing, and was cautioned that if he did not voluntarily comply with the order of possession, **costs of such enforcement, such as bailiff fees, are subject to recovery from the tenant.**

Monetary claim-

I find it reasonable that the landlord be allowed to amend her application to account for further unpaid rent, or loss of rent revenue, as the tenant has yet to vacate the rental unit. I therefore amended the landlord's application to account for a total monetary claim of \$12,000 for loss of additional rent revenue for the months of October, November, December 2020, and January 2021.

I find that the landlord submitted sufficient evidence to prove that the tenant owes the amount of rent of \$12,000, due under the tenancy agreement. I find the landlord has established a monetary claim of \$12,100, which includes the filing fee paid for this application.

For this reason, I **set aside** the monetary Order of October 5, 2021, granting the landlord the amount of \$2,500. That monetary Order of October 5, 2021, is of no force or effect.

I **replace and grant** the landlord a final, legally binding monetary order pursuant to section 67 and 82(3) of the Act for the amount of \$12,100.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is cautioned that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The original Decision and order of possession of the rental unit of October 5, 2020, by the adjudicator are confirmed and they remain valid and enforceable.

The original monetary order of October 5, 2020, by the adjudicator is set aside and is replaced by the new monetary order, as referenced herein.

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 8, 2021

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Residential Tenancy Branch