



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing, by teleconference, was held on January 8, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord attended the hearing and provided testimony. The Tenant did not attend the hearing. The Landlord testified that she posted the Notice of Hearing and evidence package to the Tenant's front door on October 25, 2020. I find the Tenant is deemed to have received this package on October 28, 2020, the third day after it was posted to the door, pursuant to Section 90 of the *Act*.

In the hearing, the Landlord stated that she is aware she should not have posted the Notice of Hearing to the Tenant's front door if she wished to proceed with a monetary application. As such, the Landlord chose to withdraw the monetary portion of her claim, and will re-apply at a later date, once the tenancy has ended. The Landlord stated she is only concerned with her application for an order of possession, and not with any of the monetary aspects, for today's proceeding.

I hereby allow the Landlord to withdraw this portion of her application. The Landlord is granted leave to reapply for any monetary amounts owing. The only ground I will consider on this application is whether or not the Landlord is entitled to an order of possession based on the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice).

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?

### Background and Evidence

The Landlords testified that current rent is \$775.00, and is due on the first day of each month.

The Landlord testified that the Tenant has a long history of not paying rent, which started back in September of 2019. The Landlord is aware that there are rules governing the payment of rent during the COVID period as defined by the regulations (March 18, 2020, until August 17, 2020). The Landlord stated this Notice was posted to the Tenant's door on August 19, 2020, for failing to pay rent that had become due prior to the pandemic.

More specifically, the Landlord stated that the Tenant failed to pay:

- \$145.00 as of September 1, 2019
- \$775.00 as of October 1, 2019
- \$775.00 as of January 1, 2020
- \$775.00 as of February 1, 2020
- \$775.00 for March 1, 2020

**Total: \$3,245.00**

The Landlord stated that this is the amount they listed on the Notice, which they had to wait to serve because of the pandemic period. The Landlord stated that the Tenant did not pay any of the above unpaid rent amounts after being given the Notice, and he did not file an application to dispute the Notice.

### Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent. When a Tenant does not pay rent when due, section 46(1) of the *Act* permits a Landlords to end the tenancy by issuing a notice to end tenancy. A Tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a Tenant does not pay rent in full or dispute the notice, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

First, I find it important to note that this Notice was issued due to non-payment of rent, and not for non-payment of “affected rent”. This is an important distinction, because non-payment of affected rent has materially different considerations. “Affected rent” is rent that became due between March 18, 2020, until August 17, 2020, due to the COVID-19 pandemic. As this Notice only included rent that had accrued before that time, the Landlord was not required to issue a repayment plan, prior to issuing the Notice.

In this case, I find that the Tenant had a balance of unpaid rent in the amount of \$3,245.00 as of March 1, 2020. Due to the delay in evictions and the regulations, the Landlord did not serve this Notice until August 19, 2020, by posting it to the door of the rental unit. I find the Tenant is deemed to have received this Notice on August 22, 2020, 3 days after it was posted.

The Tenants had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence that the Tenant did either, and as such, I find the Tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

### Conclusion

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this

order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 08, 2021

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Residential Tenancy Branch