



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 and I were the only ones who had called into this teleconference.

### Preliminary Issue- Address of subject rental property

The address of the subject rental property includes the description "sm. storage rear". The landlord testified that the tenant lives in a converted storage shed behind a tenanted house.

Section 1 of the *Act* defines residential property as follows:

"residential property" means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

I find that the converted storage shed meets the definition of residential property contained in section 1 of the *Act*.

The landlord testified that the tenant was served with this application for dispute resolution on October 27, 2020 via registered mail. A Canada Post receipt stating same was entered into evidence. I find that the tenant was served in accordance with section 89 of the *Act*. The landlord testified that the tenant was also personally served with this application for dispute resolution on October 27, 2020.

#### Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be 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. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord's original application claimed unpaid rent in the amount of \$2,147.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$4,552.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenants. Therefore,

pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$4,552.00.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began approximately 1.5 years ago and is currently ongoing. Monthly rent in the amount of \$835.00 is payable on the first day of each month. A security deposit of \$265.00 was paid by the tenant to the landlord. This was a verbal tenancy agreement.

The landlord testified that on October 7, 2020 he personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"). The Notice was entered into evidence and states that the tenant failed to pay rent in the amount of \$2,047.00 that was due on October 2, 2020. The effective date of the Notice is October 18, 2020.

The landlord testified that the tenant failed to pay rent from August 2020 to January 2021. The landlord testified that the tenant has failed to pay rent pre-dating August 18, 2020; however, this application for dispute resolution is only seeking to claim unpaid rent from August 18, 2020 going forward. The landlord testified that he is seeking unpaid rent on a per diem basis from August 18-31 in the amount of \$377.00 and unpaid rent in the amount of \$835.00 per month from September 2020 to January 2021 in the amount of \$4,175.00.

### 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 this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$835.00 on the first day of each month. Based on the undisputed testimony of the landlord, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$4,552.00 in unpaid rent from August 18, 2020 to January 2021. The landlord did not provide testimony on the amount of unpaid rent before August 18, 2020. Should the landlord seek to recover unpaid rent pre-dating August 18, 2020, the landlord is at liberty to file another application for dispute resolution.

I accept the landlord's undisputed testimony that the tenant was personally served with the 10 Day Notice on October 7, 2020.

Section 46(1) 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.

Section 46(4) of the *Act* states that 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.

In this case the tenant did not pay the overdue rent within five days of receiving the Notice and did not file an application for dispute resolution to cancel the Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. I find that the Notice is valid.

In this case, this required the tenants to vacate the premises by October 18, 2020, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord in the amount of \$4,652.00.

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.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 14, 2021

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Residential Tenancy Branch