



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, OPRM-DR, FFL, CNR, LRE, FFT

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord attended the hearing via conference call and provided affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on November 25, 2020. The landlord also stated that the tenant's notice of hearing package or any documentary evidence were not received by the landlord.

I accept the undisputed affirmed evidence of the landlord and find that the tenant has been properly served as per sections 88 and 89 of the Act. I also find after 44 minutes after the scheduled start of the hearing that as the tenant has not served the landlord

with his notice of hearing package nor any documentary evidence package that the tenant's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The landlord provided undisputed affirmed evidence that the tenant was served with a 10 Day Notice to end tenancy for unpaid rent (the 10 Day Notice) dated November 1, 2020 on November 8, 2020 by posting it to the rental unit door. The 10 Day Notice states that the tenant failed to pay rent of \$2,500.00 that was due on November 1, 2020 and provides for an effective end of tenancy date of November 11, 2020.

Section 53 of the Act, Incorrect effective dates automatically changed, states in part,

If a landlord or tenant gives notice to end a tenancy on a date that does not comply with this Division, this notice is deemed to be changed in accordance with subsection (2) or (3). Subsection 53 (2), If the effective date in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In this case, the landlord provided for an effective end of tenancy date of November 11, 2020 when the 10 Day Notice was served on November 8, 2020. As such, the effective end of tenancy date is corrected to November 18, 2020.

The landlord also seeks a clarified monetary claim of \$7,742.48 which consists of:

\$2,500.00	Unpaid Rent, November 2020
\$2,500.00	Unpaid Rent, December 2020
\$2,500.00	Unpaid Rent, January 2021

\$98.05	Unpaid Utilities, Water bill
\$44.43	Unpaid Utilities, Hydro bill
\$100.00	Filing Fee

The landlord claims that the tenant failed to pay any rent since the 10 Day Notice dated November 1, 2020 was served to the tenant and as of the date of this hearing has not paid any rent.

The landlord also claims that the tenant has failed to pay utilities for water and hydro. The landlord has submitted a copy of the hydro bill for \$44.43 for the period October 9, 2020 to November 12, 2020. The landlord also submitted a copy of the water bill for \$168.69 for the period September 1, 2020 to November 30, 2020. The landlord clarified that this amount was pro-rated for 91 days and the tenant charged 53 days starting on October 8, 2020 for \$98.05.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served with the 10 Day Notice dated November 1, 2020. Although the tenant had filed an application in dispute of that notice, the tenant's application was dismissed with leave to reapply for lack of service. The landlord provided undisputed evidence of the contents of the 10 Day Notice that the tenant failed to pay rent of \$2,500.00 that was due on November 1, 2020. The landlord provided undisputed evidence that as of the date of this hearing the tenant has not made any effort to pay rental arrears or any utility arrears.

Pursuant to section 55 (1) states if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice complies with section 52 and during the dispute resolution hearing proceeding, dismisses the tenant's application or upholds the notice.

In this case, the tenant's application was dismissed with leave to reapply and the landlord's 10 Day Notice is upheld. The landlord is granted an order of possession to be effective 2 days after it is served upon the tenant.

As for the monetary claim, I find based upon the undisputed evidence of the landlord that the tenant failed to pay any rent for November 2020, December 2020 and January 2021 at \$2,500.00 per month. I also find that the tenant has failed to pay utilities of \$44.43 for hydro and \$98.05 for water bills unpaid. The landlord has established a total monetary claim of \$7,642.48.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$7,742.48.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, these orders may be enforced as orders of the Supreme Court of British Columbia and the Small Claims Division of the Provincial 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: February 1, 2021

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Residential Tenancy Branch