



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to the tenant;
- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed by the tenant; and
- to recover the cost of the filing fee.

The landlord attended the teleconference hearing. The tenant did not attend the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered.

The landlord testified that the tenant was served the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) on November 27, 2020. The landlord provided the tracking number for the registered mail as proof of service.

Based on the landlord's undisputed testimony and documentary evidence, I accept that the tenant was sufficiently served in a manner required under the Act and the hearing proceeded in the tenant's absence.

During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant for the Decision.

**Preliminary Matter-**

The landlord said he wanted to abandon his monetary claim and proceed only on the request for an order of possession of the rental unit. The hearing proceeded on this basis only.

As I have not considered the merits of the landlord's monetary claim, he is entitled to file another application for any monetary compensation arising from this tenancy.

**Issue(s) to be Decided**

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent?

**Background and Evidence**

The landlord explained that the tenant is his daughter, who formerly owned the rental unit. The landlord said that he eventually purchased the property so the tenant could continue to reside there. Their agreement was that the tenant would pay \$1,200 per month for rent. The landlord said there is no written tenancy agreement and the tenancy began approximately five years ago. The landlord submitted text messages between the parties verifying the amount of monthly rent agreed upon.

The landlord submitted that the tenant has over time continuously failed to pay the monthly rent and has promised to vacate the rental unit by January 2021, but that she has not.

The landlord said that as a result of the continuing lack of rent payments, he served the tenant with a 10 Day Notice, by attaching it to the tenant's door on November 2, 2020, listing a rent deficiency of \$1,600 owed as of November 1, 2020. The effective move-out date listed was November 12, 2020. Filed into evidence was the Notice.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant 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 any rent since receiving the Notice and has an overall rent deficiency of at least \$5,000.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

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 is the case here.

I have no evidence before me that the tenant applied to dispute the Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, 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 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.

As a result, I find that the landlord is entitled to and I grant an order of possession of the rental unit pursuant to section 55(2) of the Act, effective two days after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, such as **bailiff fees**, are subject to recovery from the tenant.

Conclusion

The landlord's application for an order of possession of the rental unit has been granted.

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 9, 2021

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Residential Tenancy Branch