



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      For the tenant: CNR  
For the landlord: OPR, MNR, FF

### Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied on November 20, 2020, for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (**Notice**) issued by the landlord.

The landlord applied on November 24, 2020, for:

- an order of possession of the rental unit pursuant to the Notice served to the tenant;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

The tenant, the landlord, the landlord's agent (agent) and the landlord's translator attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their affirmed evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all 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 and Procedural Matters-

When explaining the order of procedure for the hearing and the conduct expected during the hearing, the tenant did not respond. It became clear that the tenant did not understand or speak English.

The agent suggested that the landlord's translator translate for the tenant and the translator agreed to perform translation services for the tenant.

By way of translation, the tenant said he perhaps needed his translator to come into the hearing and that maybe she was dropping off a child at school. It was not clear if the tenant actually had arranged for a translator for the hearing or if he was seeking an adjournment of the hearing, or neither.

I declined to wait for the translator, and I note that no one called in for the tenant during the 38 minute hearing. It is up to each party to prepare for the dispute resolution hearing.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent, monetary compensation from the tenant, and to recovery of the filing fee paid for this application?

#### Background and Evidence

The evidence showed that this tenancy began on October 1, 2016, for a monthly rent of \$780, and a security deposit of \$390 being paid by the tenant to the landlord.

Subsequent to that, the parties formalized their tenancy by entering into a written tenancy agreement, for a tenancy start date of October 1, 2018, with the same monthly rent, due on the first day of the month, and security deposit. Filed into evidence is a copy of the written tenancy agreement.

The agent submitted that the tenant's current monthly rent is \$800.

The rental unit is in the basement suite of the landlord's home, which she occupies on the upper level.

The parties were informed the landlord would proceed first in the hearing to explain or support her Notice, as required by the Rules.

The agent submitted that on November 16, 2020, the tenant was served the Notice, by personal delivery, listing unpaid rent of \$5,000 owed as of November 1, 2020. The effective vacancy date listed on the Notice was November 26, 2020. Filed into evidence was a copy of the Notice and a signed, witnessed statement showing proof of delivery of the Notice to the tenant.

The agent asserted that since the issuance of the Notice, the tenant has not paid any rent and that he owes a further \$2,400, through February 2021. In total, the agent said the total unpaid monthly rent through February 2021, is \$7,400, which includes the amount of unpaid monthly rent of \$5,000 listed on the Notice and a further \$800 for December 2020, and January and February 2021, each.

#### *Tenant's response-*

In response, the tenant confirmed that he has not paid the rent listed on the Notice and has not paid rent for December 2020, or January and February 2021. The tenant said that he has not had revenue since the Covid-19 pandemic started and that prior to that, he paid his rent on time.

The tenant requested forgiveness, as he has had no income and because the landlord has lived in her home for a long time.

The tenant said that he expects to get a job soon.

The tenant did not provide documentary evidence for the hearing, but he stated in his application that he had no revenue.

#### Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

*Landlord's application-*

**Order of possession of the rental unit –**

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 comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenant that he had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenant was served a 10 Day Notice, that the tenant owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenant filed an application for dispute resolution in dispute of the Notice, he confirmed the landlord's evidence that he had not paid the monthly rent listed on the Notice or any monthly rent since that date. I cannot consider the personal circumstances of the tenant, only his obligations under the law.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlord is entitled to and I grant an **order of possession** for the rental unit **effective 2 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 recoverable from the tenant.

Further, I asked the translator to inform the tenant that he will have to vacate the rental unit in 2 days, after the Notice is served to him.

**Monetary order –**

I also find that the landlord submitted sufficient evidence to show that the tenant owed, but did not pay, the required monthly rent due under the written tenancy agreement.

I find it reasonable and appropriate to allow the landlord to amend her monetary claim of \$5,000, the accumulated monthly rent owed as of November 1, 2020, to include the amount of monthly rent owed through February 2021, in the amount of \$2,400, or \$800 per month.

I allow the landlord recovery of her filing fee of \$100.

I therefore find the landlord is entitled to a monetary award of **\$7,500**, comprised of unpaid rent of **\$7,400** owed through February 2021, and the **\$100** filing fee paid by the landlords for this application.

I grant the landlord a final, legally binding **monetary order** pursuant to section 67 of the Act for the amount of **\$7,500**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the 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 recoverable from the tenant.

The landlord is also permitted to use the tenant's security deposit of \$390 in partial satisfaction of her monetary order, and if she so chooses, the monetary order is reduced by that amount.

*Tenant's application-*

As I have granted the landlord's application for an order of possession of the rental unit and monetary order pursuant to the landlord's Notice, I **dismiss** the tenant's application for cancellation of the Notice, **without leave to reapply**.

Conclusion

**The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted.**

**The tenant's application is dismissed without leave to reapply as I have granted the landlord's application in full.**

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