



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPRM-DR, OPR-DR, MNRL-S

### **Introduction**

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

### **Preliminary Issue – Status of Tenancy**

DS, daughter of former tenant RA attended the hearing. Both the landlord and DS confirmed that the tenant RA, now deceased, moved out of the rental unit in June 2020. Both DS and the landlord testified that RA's former partner JA still resides in the rental unit. The landlord submitted a copy of the tenancy agreement that names both RA and JA as tenants under the tenancy agreement.

Residential Tenancy Policy Guideline #13 clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

*"A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement."*

*Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to*

*apportion among themselves the amount owing to the landlord. For example, if John and Susan move out at the end of their tenancy, the landlord can make a claim for any damages to the property against either co-tenant, regardless of whether John was solely responsible for causing the damage.”*

I find that RA and JA were co-tenants under the tenancy agreement. As RA had moved out in June of 2020, and as JA still resides at the rental address, I amend the landlord's application to remove RA as a named tenant from this dispute. As RA is no longer a party to the dispute, DS was excused from the hearing. From here on, the JA will be referenced as “the tenant” in this dispute.

While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 11:21 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlord 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. During the hearing, I also confirmed from the online teleconference system that the landlord, RA's daughter, and I were the only ones who had called into this teleconference.

After the landlord has received the interim decision dated November 26, 2020, the landlord served with the landlord's application for dispute resolution hearing package to the tenant on December 3, 2020 by way of registered mail. The landlord provided a tracking number in their evidentiary materials. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's application package on December 8, 2020, five days after its registered mailing.

The landlord testified that the tenant was served with the 10 Day Notice dated October 22, 2020 by way of registered mail. The landlord provided the receipt and tracking information in their evidentiary materials. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on October 27, 2020, 5 days after mailing.

Although the landlord had applied for a monetary Order of \$4,125.00 in their initial claim, since they applied another \$2,125.00 in outstanding rent had become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$4,125.00 to \$6,250.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

**Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to monetary compensation for unpaid rent?

**Background and Evidence**

The landlord testified regarding the following facts. This month-to-month tenancy began on May 1, 2020 with monthly rent set at \$1,000.00, payable on the first of the month. The landlord submitted a copy of the tenancy agreement in his evidentiary materials. The two named tenants on the tenancy agreement were RA and JA, although RA moved out some time in June of 2020, and passed away on January 14, 2021. As stated above, I find that RA and JA were co-tenants, and JA remains as a tenant at the rental address. The landlord collected a security deposit in the amount of \$500.00, which the landlord still holds.

The landlord served the 10 Day Notice, dated October 22, 2020, on the tenants for failing to pay the September and October rent, indicating an effective move-out date of November 5, 2020.

The landlord submitted a monetary order worksheet outlining the outstanding rent for this tenancy, including the rent still owed under the re-payment plan as set out in table below. The landlord is seeking an Order of Possession pursuant to the 10 Day Notice, a monetary order in the amount of \$6,250.00 for the unpaid rent, as well as recovery of the filing fee.

Unpaid Rent for September 2020 through to February 2021 (6 months)	\$6,000.00
Rent Owed under Repayment Plan for August 2020	250.00
<b>Total Monetary Order</b>	<b>\$6,250.00</b>

**Analysis**

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or pay the outstanding rent. I find that the tenant has failed to file an application for dispute resolution within the five

days of service granted under section 46(4) of the *Act*, nor did the tenant pay the outstanding rent. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, November 6, 2020.

I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. In this case, this required the tenant and anyone on the premises to vacate the premises by November 6, 2020. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

**Section 26** of the *Act*, in part, states as follows:

**Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The landlord provided undisputed evidence that the tenant failed to pay \$6,250.00 in outstanding rent for this tenancy. On this basis, I allow the landlord to recover the unpaid rent.

The landlord continues to hold the tenant's security deposit of \$500.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

**Conclusion**

I find that the landlord's 10 day Notice is valid and effective as of November 6, 2020.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord's monetary claim as set out in the table below. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim. The landlord is issued a monetary order in the amount of \$5,750.00.

Unpaid Rent for September 2020 through to February 2021 (6 months)	\$6,000.00
Rent Owed under Repayment Plan for August 2020	250.00
Less Security Deposit Held	-500.00
<b>Total Monetary Order</b>	<b>\$5,750.00</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

Residential Tenancy Branch

This decision is made on authority of the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 12, 2021

Residential Tenancy Branch