



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: CNR, CNR-MT, MNDCT, OLC, CNR, DRI, LRE, FFT  
For the landlord: MNRL-S, OPR

### **Introduction**

On December 2, 2020 the landlord issued a Ten-Day Notice for Unpaid Rent (the “10-Day Notice”) to the tenant. On December 7, 2020 the tenant applied for dispute resolution for an order cancelling this December 10-Day Notice. They also applied for monetary compensation, and an order that the landlord comply with the legislation and/or the tenancy agreement.

The landlord issued a subsequent 10-Day Notice on January 4, 2021. On January 12, 2021, the tenant then applied for a cancellation of this January 10-Day Notice, asking for time over that allowed to do so. They also applied for further monetary compensation, an order restricting the landlord’s right of entry, and to dispute a rent increase.

On January 13, 2021 the landlord applied for an Order of Possession of the rental unit. This stems from the January 10-Day Notice they issued to the tenant. They also applied for recovery of rent amounts owing by the tenant.

These matters were joined together and proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 4, 2021. The landlord attended the telephone conference call hearing; the tenant did not attend.

The landlord presented that they sent notice of this hearing, as well as their prepared evidence to the tenant. This was via registered mail, and the landlord presented evidence of this in the form of their postal receipt and Canada post tracking number. From this evidence, I am satisfied the landlord served the tenant notice of this hearing, as per s. 89(1)(c).

The landlord provided they received no notice from the tenant of their two Applications of December 7 and January 12. They received no prepared documentary evidence from the tenant.

### Preliminary Matter

The tenant did not attend the hearing, although I left the teleconference hearing connection open until 9:59 a.m. to enable them to call in to this teleconference hearing scheduled for 9:30 a.m. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when they applied. I also confirmed throughout the duration of the call that the tenants were not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the tenant's applications for cancellation of the December 10-Day Notice and the January 10-Day Notice. Additionally, all other pieces that the tenant applied for are dismissed without leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement that appears in the evidence. The parties signed the agreement jointly for the tenancy starting on April 1, 2018. The rent payable was \$2,500 per month. The \$1,200 security deposit amount was carried over from a previous tenant who lived with this tenant at one time. On these points concerning the initial agreement, there is no evidence contrary to that provided by the landlord here.

The landlord provided a copy of the January 10-Day Notice, issued on January 4, 2021. This document gave the move-out date of January 14, 2021. This listed the failure by the tenants to pay a rent amount of \$3,500 on January 1, 2021. The landlord served this document by attaching it to door of the rental unit and leaving a copy in the tenant's mailbox. As provided in a 'Proof of Service' document, a witness observed this service and signed a statement attesting to that on January 4, 2021.

On the Application, the landlord listed an amount of rent owing of \$3,500. This was unpaid rent for December 2020 and January 2021, when the tenant paid only \$750 rent for each of these months. Additionally, the tenant paid \$750 for February, since the time of the landlord's Application here, and no rent for March 2021. The landlord in the hearing stated they wish to amend their Application to include these monetary amounts owing. This makes the total outstanding rent amount claimed by the landlord here to be \$7,750.

In the hearing, the landlord stated they were not certain if the tenant vacated the unit already. They did not observe the tenant around the rental unit a short time prior to the hearing. The landlord tried to set schedules to visit the unit, but the tenant only replied that visits were not allowed due to public health concerns.

### Analysis

From the evidence and testimony of the landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the amount of the security deposit. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

The *Act* s. 46(1) states that a landlord may end a tenancy if the rent is unpaid on any day after the rent is due, by giving notice to end the tenancy, effective on a date that is not earlier than 10 days after the tenant receives the notice.

The *Act* s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I find as fact that the tenant held occupancy of the unit beyond January and into February and March 2021. I accept the evidence before me that the tenant failed to pay the January rent owed in full by January 9, 2021 within five days granted under the *Act*. Added to this is an amount outstanding for the month of December. The tenant did not dispute the January 10-Day Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, January 14, 2021.

The *Act* s. 52 states that a notice to end tenancy, in order to be effective, must be in writing and must be signed and dated by the landlord, give the rental unit address, state the effective date, state the grounds for ending the tenancy, and be in the approved form.

I find the landlord has the authority to issue the Notice under s. 46 of the *Act*. On my review of the individual document, I find it complies with the requirements of s. 52 regarding form and content. Therefore, I grant the landlord's request for an Order of Possession under s. 55 of the *Act*.

Concerning a monetary claim, the party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The *Act* s. 26 outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether 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.

I accept the evidence before me that the tenant failed to pay full rent for December 2020 continuing on with a balance after that, and the months following through to February and March 2021. This is based on the affirmed and uncontested oral testimony of the landlord in the hearing. I find on a balance of probabilities that these amounts are accurate. As presented, I find the landlord is entitled to the amount of \$7,750 as they claim.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$7,750. After setting off the security deposit amount of \$1,200, there is a balance of \$6,550. I am authorizing the landlord to keep the security deposit and award the balance of \$6,550 as compensation for rent owing.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** 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.

Pursuant to s. 67 of the *Act*, I grant the landlord a Monetary Order for the recovery of the rent amounts claimed. This amount is \$6,550. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 4, 2021

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Residential Tenancy Branch