



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPUM-DR, OPU-DR, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) 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 their filing fee for this application from the tenant pursuant to section 72.

The landlord, W.K. (the landlords) and their counsel attended the hearing via conference call and provided undisputed testimony. The landlords stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on December 24, 2020. The landlords also stated that the tenant was served with the submitted documentary evidence on two occasions, the first on December 3, 2020 and the second on December 24, 2020, both via Canada Post Registered Mail and has submitted a copy of the Canada post Customer Receipt and tracking label as confirmation.

At the outset, the landlord's application was clarified. The landlord stated that because the total monetary claim exceeds the Residential Tenancy Branch limit, the landlords seek to cancel the monetary portion and pursue that in the Supreme Court of British Columbia. On that basis, the hearing shall proceed only on the landlords' request for an order of possession and recovery of the filing fee. No further action is required for the monetary claim.

### Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for 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 applicant's claim and my findings are set out below.

This tenancy began on March 15, 2011 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated March 10, 2011. The monthly rent was \$1,500.00 payable on the 1<sup>st</sup> day of each month and a \$750.00 security deposit paid on March 15, 2011.

The landlords seek an order of possession for unpaid rent and recovery of the \$100.00 filing fee. The landlord provided details that the tenant has failed to pay for any rent or utilities since December 2017.

The landlords stated that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 30, 2020 was served to the tenant by posting it on the rental unit door on September 30, 2020. The 10 Day Notice displays an effective end of tenancy date of October 10, 2020 and states that the tenant failed to pay rent of \$49,500.00 that was due on September 1, 2020 and that the tenant owes \$6,600.00 in unpaid utilities following a written demand given to the tenant on September 1, 2020. The landlord has submitted a copy of a completed proof of service document dated September 30, 2020 which confirmed that the tenant was served by the named landlord, W.K. on September 30, 2020 and that it was witnessed by the other named landlord, S.K. The landlords referenced a submitted copy of a "Demand letter" dated September 30, 2020 which the landlords stated serve as their written notice to the tenant for unpaid utilities of \$6,600.00. The landlord clarified that the date on the 10 Day Notice as September 1, 2020 was in error when it should have been September 30, 2020 as provided in the "Demand letter".

The landlords stated that the named landlord, W.K. has been in and out of hospital over the last few years due to health issues that prevented him from dealing with the unpaid rent and utilities issues sooner. The landlords stated that the other named landlord, S.K. had attempted to communicate with the tenant, but felt intimidated by him due to the tenant's aggressive behaviour. The landlords stated that the tenant has failed to pay any rent or utilities since December 2017 despite their attempts at communication.

### 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.

In this case, I accept the undisputed evidence of the landlords and find that a 10 Day Notice dated September 30, 2020 was served upon the tenant by posting it to the rental unit door on September 30, 2020. The landlords have provided a copy of a completed proof of service document dated September 30, 2020 as confirmation.

The landlords provided undisputed evidence that the tenant has failed to pay any rent beginning December 2017 to the date of this hearing. The landlords stated that the tenant is in rental arrears of more than \$49,500.00 and \$6,600.00 in unpaid utilities as noted on the 10 Day Notice. The landlords stated that the tenant was served with a demand letter for unpaid utilities on September 30, 2020 correcting the date mistake as listed on the 10 Day Notice of September 1, 2020 as a clerical error. The landlords clarified during the hearing that due to the landlord's (W.K.) ill health the unpaid rent was not dealt with earlier.

I find on a balance of probabilities based upon the undisputed evidence of the landlord that the tenant has failed to pay rent since December 2017 and the 10 Day Notice dated September 30, 2020 is upheld. The landlords are granted an order of possession to be effective 2 days after it is served upon the tenant as the effective end of tenancy date has now passed.

The landlords are also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlords are granted an order of possession.

The landlords are granted a monetary order for \$100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as orders of those courts.

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: March 15, 2021

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Residential Tenancy Branch