



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CHRISTOPHER WALL MANAGEMENT  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR FFL

### Introduction

This matter originally proceeded by way of a Direct Request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (Act) and dealt with an Application for Dispute Resolution by the landlord for an order of possession for unpaid rent. On January 22, 2021, an adjudicator adjourned this matter to a participatory hearing which was held on this date, Monday April 19, 2021 at 11:00 a.m. Pacific Time.

An agent for the landlord, CA (agent) attended the teleconference as scheduled and provided affirmed testimony. The agent also presented their documentary evidence. I have described the evidence relevant to the matters before me below.

As the tenant did not attend the hearing, service of the Notice of Hearing, application, documentary evidence were considered. The agent provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the tenant and that the tenant continues to occupy the rental unit and has since failed to pay their portion of rent for the months of December, 2020, January 2021, February 2021, March 2021 and April 2021. A registered mail receipt was submitted in evidence during the hearing and according to the Canada Post registered mail tracking website was successfully delivered to the tenant. The registered mail tracking number has been included on the style of cause for ease of reference. Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the Act. According to the online registered mail tracking information the registered mail package was mailed on January 6, 2021 and was delivered the next day to the concierge on January 7, 2021. I find the tenant was duly served on January 11, 2021 which is five days after it was mailed. I note that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the Act. The agent testified that the tenant continues to occupy the rental unit and has not paid their portion of rent since November 2020.

### Preliminary and Procedural Matters

The agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The agent was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The agent had no questions about my direction pursuant to RTB Rule 6.11.

In addition, the agent confirmed their email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenant does not have an email address the decision will be sent by regular mail to the tenant.

### Issue to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?

### Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. The tenant began on January 1, 2020. The monthly rent is \$1,000.00 with the tenant paying \$500.00 and the Ministry paying the other \$500.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$500.00 at the start of the tenancy, which the landlord continues to hold. The agent requested their filing fee if they are successful.

The agent testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 4, 2020 (10 Day Notice) was posted to the tenant's door on December 4, 2020. A photo of the 10 Day Notice posted to the tenant's door was submitted in evidence and reviewed. Section 90 of the Act states that documents posted to the door are deemed served 3 days after they are posted.

The agent testified that the tenant has not paid their \$500.00 portion of rent for December 2020, and January to April 2021 inclusive, and continues to occupy the rental unit. The landlord is seeking an order of possession and the agent stated that the tenant did not dispute the 10 Day Notice and has not paid their portion of rent since being served with the 10 Day Notice.

### Analysis

Based on the landlord's undisputed documentary evidence and undisputed testimony provided by the agent, and on the balance of probabilities, I find the following.

**Order of Possession** - I accept the agent's undisputed testimony that the tenant failed to pay their portion of rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the corrected effective vacancy date on the 10 Day Notice, December 17, 2020. Pursuant to section 53 of the Act, incorrect effective dates of a Notice to End Tenancy automatically correct. The 10 Day Notice was posted to the door on December 4, 2020. Pursuant to section 90 of the Act, documents served by posting to the tenant's door are deemed received three days later which makes the deemed service date of the 10 Day Notice December 7, 2020. I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

I find the tenancy ended on December 17, 2020 and that the tenant has been overholding the rental unit since that date.

As the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the Act. **I authorize** the landlord to retain **\$100.00** from the tenant's \$500.00 security deposit in full satisfaction of the landlord's recovery of the filing fee. As a result, I find the tenant's security deposit balance has been reduced from \$500.00 to \$400.00 effectively immediately pursuant to section 62(3) of the Act.

### Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenant, which must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain \$100.00 from the tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee. The tenant's security deposit has been reduced from \$500.00 to \$400.00 as a result.

The decision and order of possession will be emailed to the landlord. The tenant will have the decision sent to them by regular mail as the landlord is not aware of an email address for the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 19, 2021

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Residential Tenancy Branch