



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **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.

While the landlord and their son attended the hearing by way of conference call, the tenant did not. I waited until 11:18 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlord and their son were 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, landlord's son, and I were the only ones who had called into this teleconference.

The landlord testified that the hearing package and evidence was served to the tenant's address by registered mail on February 5, 2021. The landlord provided a receipt and a photo of the package in their evidentiary materials. In accordance with sections 88, 89 and 90 of the Act, I find the tenant deemed served with copies of the hearing package and evidence on February 10, 2021, five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated January 5, 2021, with an effective date of January 15, 2021, by way of posting the Notice on the tenant's door. In accordance with sections 89 and 90 of the Act, I find the tenant deemed served with the 10 Day Notice on January 8, 2021, 3 days after posting.

Although the landlord had applied for a monetary Order of \$625.00 in their initial claim, since they applied another \$2,500.00 in rent has become owing that was not included in their application. I have accepted the landlords' request to amend their original application from \$625.00 to \$3,125.00 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

### **Issues(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

### **Background and Evidence**

The landlord and their son testified regarding the following facts. The tenant is on a month-to-month tenancy that began on November 15, 2020, with monthly rent in the amount of \$625.00 payable on the fifteenth day of each month. The landlord holds a security deposit in the amount of \$312.50 for this tenancy. The tenant continues to reside in the rental unit.

The landlord served the tenant with a 10 Day Notice to End Tenancy dated January 5, 2021 after the tenant failed to pay the December 2020 rent on December 15, 2020. The landlord testified that the tenant has not paid any of the outstanding rent since the 10 Day Notice was issued, nor has the tenant paid any rent since. The total outstanding rent is \$3,125.00. The landlord is seeking an Order of Possession as well as monetary compensation for the unpaid rent.

### **Analysis**

The landlord provided undisputed evidence at this hearing as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on January 18, 2021, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by January 18, 2021. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession,

pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 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 outstanding rent in the amount of \$3,125.00. Therefore, I find that the landlord is entitled to a monetary order for \$3,125.00.

The landlord continues to hold the tenant's security deposit of \$312.50. 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 grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$2,812.50 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

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 Section 9.1(1) of the *ACT Tenancy Act*.

Dated: April 29, 2021