



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU-DR, OPUM-DR, FFL

### Introduction

On December 22, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Utilities based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on April 15, 2021.

The Landlord attended the hearing late, at 11:05 AM; however, the Tenant did not attend at any point during the 29-minute teleconference. At the outset of the hearing, I advised the Landlord that recording of the hearing was prohibited. He was reminded to refrain from doing so and he acknowledged this term. All parties in attendance provided a solemn affirmation.

The Landlord advised that he served the Notice of Hearing and evidence package to the Tenant by Xpresspost on January 21, 2021 (the tracking number is noted on the first page of this Decision). The tracking history confirmed that this package was delivered on January 22, 2021. Based on this undisputed evidence, I am satisfied that the Tenant was sufficiently served the Notice of Hearing and evidence package. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on July 1, 2019, that rent was established at an amount of \$1,100.00 per month, and that it was due on the first day of each month. The Tenant was also responsible for utilities in the amount of \$100.00 per month. A security deposit of \$600.00 was also paid. The Landlord was cautioned, pursuant to Section 19 of the *Act*, that he was only permitted to collect a security deposit in an amount that did not exceed half a month's rent. A copy of the signed tenancy agreement was submitted as documentary evidence.

He testified that the Notice was served to an adult that lived with the Tenant on September 28, 2020, and that this person signed to receive the Notice. The Notice indicated that \$9,900.00 was owing for rent on September 1, 2020 and that \$900.00 was owing for utilities on September 1, 2020. The effective end date of the tenancy was noted as October 10, 2020.

The Landlord submitted that the Tenant did not pay any rent for January, February, March, April, May, June, July, August, or September 2020. Thus, the Notice was served. As well, the Tenant has not paid any rent since service of the Notice either. He stated that the Tenant did not have any authorization to withhold any amount of rent from January 2020 onwards. As such, the Landlord is seeking an Order of Possession and a Monetary Order in the amount as follows:

- January 2020 rent: \$1,100.00
- February 2020 rent: \$1,100.00
- March 2020 rent: \$1,100.00
- April 2020 rent: \$1,100.00
- May 2020 rent: \$1,100.00

• June 2020 rent:	\$1,100.00
• July 2020 rent:	\$1,100.00
• August 2020 rent:	\$1,100.00
• September 2020 rent:	\$1,100.00
• October 2020 rent:	\$1,100.00
• November 2020 rent:	\$1,100.00
• December 2020 rent:	\$1,100.00
• January 2021 rent:	\$1,100.00
• February 2021 rent:	\$1,100.00
• March 2021 rent:	\$1,100.00
• April 2021 rent:	\$1,100.00
• Total rental arrears:	<b>\$17,600.00</b>

He submitted that he did not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities as far back as January 2020 because the Tenant told him she would pay the rent. He stated that the reason he waited until December 2020 to make this Application, despite serving the Notice in September 2020, was due to laziness.

He submitted that the Tenant would pay rent with cash, but he did not provide receipts as required by Section 26 of the *Act*. He also advised that he did not serve the Tenant with a demand letter for the utilities, nor did he serve the Tenant with a payment plan for the affected rent of March to August 2020, due to the pandemic.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Section 46 of the *Act* states that if the tenancy agreement requires the Tenant to pay for utilities, the Landlord must first give the Tenant a written demand for payment. If the Tenant does not pay this amount within 30 days of the written demand, the Landlord may then treat this amount as unpaid rent.

Should the Tenant not pay the rent or utilities when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenant would have five days to pay the rent or utilities in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

With respect to the utilities owing on the Notice, as the Landlord did not comply with the *Act* and serve a written demand for the utilities, I do not find that the Notice is valid for ending the tenancy due to unpaid utilities.

Regarding the unpaid rent, the undisputed evidence before me is that the Tenant was served received the Notice on September 28, 2020. According to Section 46(4) of the *Act*, the Tenant had 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenant received the Notice on September 28, 2020, she must have paid the rent in full by Saturday October 3, 2020 or disputed the Notice by Monday October 5, 2020 at the latest. While the amount of the rent noted as owing on the Notice was incorrect as the Landlord also accounted for affected rent during the pandemic, I find it important to note that the Tenant did not dispute the Notice within the five-day time frame.

Furthermore, and more importantly, the Tenant did not pay any rent at all. Had the Tenant paid the amount of rent that was outstanding, not including the affected rent portion, within five days of receiving the Notice, then I would likely be satisfied that the Landlord would not be awarded an Order of possession. As the Tenant did not have authorization from the Landlord, or a valid reason under the *Act*, to withhold the rent, I find that the Tenant breached the *Act* and jeopardized her tenancy.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice. Despite the Landlord applying for an Order of Possession based on unpaid utilities, I find it reasonable to conclude that the Tenant was also aware that rent was outstanding. As such, I find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. Consequently, the Order of Possession takes effect **two days** after service on the Tenant.

I also grant the Landlord a monetary award in the amount of **\$17,600.00** for the outstanding rental arrears. In addition, while an Order of Possession was not granted due to the outstanding utilities, as I am satisfied that the Tenant did not pay the utilities owing, I grant the Landlord a monetary award in the amount of **\$900.00**.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these debts.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenant to the Landlord**

Item	Amount
Rental arrears for January 2020	\$1,100.00
Rental arrears for February 2020	\$1,100.00
Rental arrears for March 2020	\$1,100.00
Rental arrears for April 2020	\$1,100.00
Rental arrears for May 2020	\$1,100.00
Rental arrears for June 2020	\$1,100.00
Rental arrears for July 2020	\$1,100.00
Rental arrears for August 2020	\$1,100.00
Rental arrears for September 2020	\$1,100.00
Rental arrears for October 2020	\$1,100.00
Rental arrears for November 2020	\$1,100.00
Rental arrears for December 2020	\$1,100.00
Rental arrears for January 2021	\$1,100.00
Rental arrears for February 2021	\$1,100.00
Rental arrears for March 2021	\$1,100.00

Rental arrears for April 2021	\$1,100.00
Utilities	\$900.00
Filing Fee	\$100.00
Security deposit	-\$600.00
<b>Total Monetary Award</b>	<b>\$18,000.00</b>

### Conclusion

Based on the above, 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$18,000.00** 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 16, 2021

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Residential Tenancy Branch