



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR OPRM-DR FFL

### Introduction

This matter originally proceeded by way of Direct Request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (Act) and dealt with an Application for Dispute Resolution (application) by the landlord for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2021 (10 Day Notice), for a monetary order for unpaid rent and to recover the cost of the filing fee. On March 8, 2021, an adjudicator adjourned the matter to a participatory hearing which was held on this date, Friday, April 16, 2021 at 9:30 a.m. Pacific Time. An Interim Decision dated March 8, 2021 was issued, which should be read in conjunction with this decision.

On April 16, 2021 the landlord attended the participatory hearing and was affirmed. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated March 8, 2021 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by personal service on March 9, 2021 at 7:00 p.m. at the rental unit and was witnessed by third party, PS. Based on the above and without any evidence before me to prove to the contrary, I accept that the tenant was personally served with the Notice of Hearing, application and documentary evidence on March 9, 2021, as claimed by the landlord. Give the above, I find this matter to be undisputed by the tenant.

### Preliminary and Procedural Matters

The landlord testified that in addition to the rent owed in the original claim for \$1,900.00, the tenant has subsequently not paid the rent for March and April of 2021. As a result, the landlord requested to amend the application to include rent owed for March and April of 2021, which totals \$3,400.00 before the filing fee. The landlord also stated that the tenant continues to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, from \$1,900.00 to \$3,400.00. The landlord also testified that there is no longer any security deposit as the tenant has already granted permission to retain the security deposit towards rent arrears and that the amount of \$3,400.00 has the security deposit already accounted for in that amount.

In addition, the landlord 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 landlord 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 landlord 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 landlord did not have had any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the landlord confirmed their email address 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.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenant agreement was submitted in evidence. A month to month tenancy began on November 13, 2020. Monthly rent in the amount \$800.00 is due on the 13<sup>th</sup> day of each month. According to the landlord, the tenant already surrendered their full \$400.00 security deposit towards previous rent arrears by agreement of the parties.

The landlord testified that the 10 Day Notice was served personally on the tenant at the rental unit on February 2, 2021 at 7:15 p.m., which was witnessed by third party, PS. This is supported by the Proof of Service document submitted in evidence. The 10 Day Notice indicates that \$1,800.00 was owed in rent as of January 13, 2021. The landlord stated that the tenant continues to occupy the rental unit and owes the following amount in rent arrears:

- |                  |                |
|------------------|----------------|
| 1. November 2020 | \$200.00 owing |
| 2. December 2020 | \$800.00 owing |
| 3. January 2021  | \$800.00 owing |
| 4. March 2021    | \$800.00 owing |
| 5. April 2021    | \$800.00 owing |

The landlord testified that the tenant did not dispute the 10 Day Notice or pay the rent owing. The effective vacancy date listed on the 10 Day Notice was February 12, 2021, which has passed.

The landlord is seeking an order of possession, a monetary order for unpaid rent, and to recover the cost of the filing fee.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** – I accept the landlord's undisputed testimony and I find that the tenant failed to pay any of the amount claimed by the landlord as owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice on February 2, 2021. The effective vacancy date of the Notice is listed as February 12, 2021, which has passed. I find the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was February 12, 2021. The tenant continues to occupy the rental unit.

Therefore, I **grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

I find the tenancy ended on February 12, 2021 and that the tenant has overheld the rental unit since that date.

**Claim for unpaid rent and loss of rent** – Firstly, as the tenant was served and did not attend the hearing, I find the application of the landlord to be unopposed by the tenant. I accept the disputed testimony of the landlord that the tenant owes rent as claimed in the amount of \$3,400.00 and as noted above.

Pursuant to section 26 of the Act, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has breached section 26 of the Act by failing to comply with a standard term of the tenancy agreement, which stipulates that rent is due monthly on the 13<sup>th</sup> day of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$3,400.00** as indicated above.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the Act.

Pursuant to section 38 and 67 of the Act, I grant the landlord a monetary order pursuant to section 67 of the Act in the total amount of **\$3,500.00** owing by the tenant to the landlord.

### Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenancy ended on February 6, 2020.

The landlord has established a total monetary claim of \$3,500.00 and has been granted a monetary order in that amount. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The decision and orders will be emailed to the landlord for service on the tenant. The tenant will be sent the decision by regular mail as indicated above.

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 16, 2021

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Residential Tenancy Branch