



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC, RP, OPR-DR, OPRM-DR, FFL

### Introduction

This hearing dealt with cross-applications filed by the parties. On February 4, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel 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 an Order to comply pursuant to Section 62 of the *Act*, and seeking a repair Order pursuant to Section 32 of the *Act*.

On February 5, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of 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*.

The Tenant did not attend the hearing at any point during the 22-minute teleconference. At the outset of the hearing, the Landlord was advised that recording of the hearing was prohibited and he confirmed that he was not recording. All parties in attendance provided a solemn affirmation.

As the Tenant did not attend the hearing, the Tenant’s Application is dismissed without leave to reapply.

The Landlord advised that he served the Tenant with the Notice of Hearing and evidence package by posting it to the Tenant’s door on or around February 11, 2021. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was sufficiently served the Notice of Hearing and evidence package.

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 approximately 15 years ago, that rent was currently established at an amount of \$650.00 per month, and that it was due on the first day of each month. A security deposit was also paid; however, the Landlord could not remember in what amount. A copy of the signed tenancy agreement was not submitted as documentary evidence.

He also advised that the Notice was served by posting it to the Tenant's door on January 27, 2021. The Notice indicated that \$3,543.54 was owing for rent on February 3, 2021. The effective end date of the tenancy was noted as February 11, 2021.

The Landlord submitted that the Tenant has not paid any rent since September 2021. Thus, the Notice was served. In addition to an Order of Possession for unpaid rent, the Landlord was also seeking a Monetary Order for the unpaid rent. However, as the Landlord was advised during the hearing, a Monetary Order cannot be granted on this Application as the Landlord did not serve the Notice of Hearing package in the manner permitted under the *Act* for this compensation to be considered. As such, the Landlord may make a future Application for recovery of the unpaid rent.

### 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.

Should the Tenant not pay the rent 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 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.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on January 30, 2021. 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 was deemed to have received the Notice on January 30, 2021, he must have paid the rent in full or disputed the Notice by February 4, 2021 at the latest. While the Tenant disputed the Notice within the five-day time frame, the Tenant did not attend the hearing. As such, the Tenant's Application was dismissed. Furthermore, there is no evidence provided that corroborated that the Tenant was entitled to withhold the rent.

Given that the Tenant did not have authorization from the Landlord, or a valid reason under the *Act*, to withhold the rent, I am satisfied that the Tenant breached the *Act* and jeopardized his 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 and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

With respect to the Landlord's request for a Monetary Order for the unpaid rent, as the Landlord did not serve the Notice of Hearing package in accordance with the *Act*, this claim for compensation is dismissed with leave to reapply.

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 a portion of the security deposit in complete satisfaction of this debt.

### Conclusion

As the Tenant did not attend this hearing, I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

Based on the above, the Landlord is provided with a formal copy of an Order of Possession effective **two days** after service on the Tenant. Should the Tenant or any occupant 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.

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: May 4, 2021

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Residential Tenancy Branch