



# 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

The landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on January 21, 2021 seeking an order of possession for the rental unit, a monetary order to recover the money for unpaid rent, and to recover the filing fee for the Application.

This participatory hearing was convened after the issuance of a February 12, 2021 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord’s application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord’s application to a participatory hearing as they were not satisfied with details in the landlord’s application concerning service.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 10, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The agent of the landlord (hereinafter the “landlord”) gave the tenants notice of this dispute resolution hearing by registered mail. The landlord provided tracking information and described that the information went directly to the rental unit that the tenant still occupied at that time.

I find the tenant had proper notice of this participatory hearing, as per s. 89(1)(c) of the *Act*, and did not attend.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord submitted a signed copy of the Residential Tenancy Agreement. This shows the start of tenancy date was September 1, 2020. The rent was \$2,400.00 per month payable on the first of each month. A security deposit amount of \$1,200.00 was paid on September 1, 2020.

The landlord applied for an order of possession pursuant to the 10 Day Notice issued to the tenant on November 24, 2020. This was for the then-unpaid rent amount -- \$7,200 -- that was due on November 1, 2020. The landlord sent this to the tenant via registered mail, for which they provided a receipt showing the tracking number. The landlord submitted a 'Proof of Service' document to show this was on November 24, at 17:23 p.m.

The landlord also applied for a monetary order for \$7,200.00. The landlord's 'Direct Request Worksheet' shows this is for each month of rent for September, October, and November 2020. This is the same amount indicated on the 10-Day Notice.

In the hearing, the landlord amended the claimed amount to include December 2020 – January 2021. This brings the total claimed amount to \$14,400. They also provided that they retained the security deposit after the tenant has abandoned the unit as of early March 2021 and wished to apply that amount against any amount granted.

The tenant did not attend the hearing and provided no documentary evidence in this matter.

### Analysis

I have reviewed the copy of the tenancy agreement. In combination with the landlord's oral testimony on its' terms and the conditions of how it was started with the tenant, I am satisfied that the agreement existed and both parties knew the terms and conditions therein. Based on the testimony of the landlord, and the proof of an agreement between the parties, I find the rent agreement was in place and clearly stated the amount and schedule for payment.

The Act s. 46 states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Following this, s. 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

With s. 46(5), 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.

Based on the undisputed submissions by the landlord, I find they provided the 10-Day Notice via registered mail. The tenant failed to pay the rent owing by December 4, within the five days after the deemed service date of November 29. There is no evidence before me that the tenant disputed the 10 Day Notice within the five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under s. 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 10 Day Notice, December 12, 2020. In line with this, I grant the landlord an Order of Possession.

The evidence of the landlord on the monetary claim is not disputed.

I find that the tenant is obligated to pay \$14,400.00, as per the tenancy agreement. The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$14,400.00. After setting off the security deposit, there is a balance of \$13,200.00. I am authorizing the landlord to keep the security deposit amount and award the balance of \$13,200.00 as compensation for the September 2020 to February 2021 rent amounts.

Because the landlord was successful in their Application, I grant the \$100 Application filing fee award to them.

### Conclusion

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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$13,300.00, for rent owed from September 2020 to February 2021, and recovery of the filing fee for this hearing application. The landlord is provided with this Order 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 s. 9.1(1) of the *Act*.

Dated: May 10, 2021

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Residential Tenancy Branch