



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      OPR-DR, OPRM-DR, FFL / CNR, MNDCT, OLC

### **Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”) for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$800 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s application for:

- the cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$50,000 pursuant to section 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was represented by counsel (“**FQ**”).

### **Preliminary Issue – Tenant Not Longer Resides at Rental Unit**

The parties appeared before another arbitrator of the RTB on April 20, 2021. Following the hearing, the landlord was awarded an order of possession effective two days after it was served on the tenant. She used this order to obtain a writ of possession from the BC Supreme Court and enforced the writ on May 10, 2021. Since that date, the tenant was not resided in the rental unit. As such, the landlord no longer requires an order of possession, and the tenant no longer needs to dispute the validity of the Notice. I dismiss both of these portions of the parties’ applications without leave to reapply.

The tenant stated that he had not provided any evidence in response to the landlord’s application as the eviction process cause him to be unable to prepare any evidence to respond to it. Rule of Procedure 3.15 requires that a respondent serve, and that the applicant receive, evidence the respondent intends to rely on at the hearing, no later than seven days before the hearing. As such, I find that the eviction on May 10, 2021

(seven days prior to the hearing) did not prevent him from organizing his evidence to respond to the landlord's application. Such organization ought to have been done in advance of May 10, 2021, with May 10, 2021 being the last day the tenant was permitted to serve the evidence on the landlord.

Accordingly, I declined to grant an adjournment of the landlord's application to allow the tenant an opportunity to supply response evidence.

### **Preliminary Issue – Amendment to Landlord's Claim**

At the hearing the landlord sought to further amend her application to include a claim for March, April, and a portion of May's rent (May 1 to May 10, 2021) rent which she testified remains outstanding.

Rule of Procedure 4.2 states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord is seeking compensation for unpaid rent that has increased since she first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for March and April 2021 rent, in its entirety, and a claim for compensation for May 1 to May 10, 2021 rent pursuant to section 57(3) of the Act (\$933).

### **Preliminary Issue – Tenant's Application**

The tenant did not serve the landlord with any documentary evidence in advance of this hearing. The morning of the hearing he uploaded 185 files to the Residential Tenancy Branch (the "RTB") evidence portal. I did not review these documents in advance of the hearing. He stated that he did not serve this evidence on the landlord. Accordingly, I decline to allow it into the evidentiary record.

He testified that, in early April 2021, he was diagnosed with a terminal illness, and that this diagnosis prevented him from properly preparing for his application. (I note that the

tenant never argued that he could not respond to the landlord's application as a result of this diagnoses. As such, I declined to adjourn the landlord's application on this basis.)

At the hearing, the tenant had not provided any documentary evidence (such as medical records or communication from his doctor) supporting his testimony. I gather that the documents uploaded were only a small portion of the evidence he intended adduce in support of his application.

The tenant readily conceded that, without any document evidence, his application could not succeed. I agree this is the most likely outcome. Per Rule of Procedure 6.6, he bears the onus to prove the facts necessary to support his claim. Without any documentary evidence, this is would be all but impossible to achieve.

Accordingly, and with the consent of all parties, I ordered the tenant to provide medical documents corroborating his testimony that he received a terminal diagnosis in early April 2021 by 4:00 pm on May 18, 2021. The tenant stated that he had such documents in his possession. If the tenant provided the document as ordered, I would dismiss his application *with* leave to reapply, so as to allow him sufficient time to prepare his case. I stated that, if the tenant failed to provide the required document by the appointed time, I would dismiss his application *without* leave to reapply. The parties agreed to this arrangement.

On May 18, 2021, the tenant uploaded several documents relating to his health condition. None of these documents state that he has received a terminal diagnosis. However, they relate to medical appointments that occurred on April 6 and 27, 2021, as well as to the proper use of various prescription medications. I understand that these medications can be used to treat serious and potentially life-threatening ailments. In the circumstances, I am satisfied that these documents support the tenant's testimony that he was recently diagnosed with a terminal illness.

As such, I dismiss the tenant's application with leave to reapply.

### **Preliminary Issue – Service of Landlord's Documents**

The landlord testified that she served her documentary evidence on the tenant on April 29, 2021 by posting it on the door of the rental unit. The tenant denied receiving such evidence. The landlord called a witness ("**RVW**") who testified that he personally observed the landlord post an evidence package on the door of the rental unit on April 23, 2021. He testified that he took photos of the incident and refreshed his memory as to the date the documents were served from the metadata of that photograph.

The landlord testified that she served two evidence packages on the tenant. One on April 23, 2021 and a second one (which contained all the contents of the first package as well as caselaw authorities) on April 29, 2021.

I found RVS's testimony credible and accept it as true. Accordingly, I find that the tenant is deemed served with the landlord's first evidence package on April 26, 2021, three days after it was posted on the door of the rental unit.

Due to the lack of corroboration, I decline to find that the landlord's second evidence package was served in accordance with the Act.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$1,732; and
- 2) recover the filing fee;

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agree that the tenant moved into the rental unit in October 2015. The parties agree that the tenant was not required to pay any rent in exchange for the landlord allowing him to reside in the rental unit. Rather, he was required to do to work around the residential property. Neither party provided details as to what work was to be done.

In August 2019, another individual moved into the rental unit (referred to by the parties only by her first name: "C"). The tenant characterized her as his "guest". The landlord did not require C to pay any rent until August 2020. Starting in August 2020, the landlord required C to pay her \$400 per month in rent. I am unsure if the landlord and C entered into a written tenancy agreement.

On November 24, 2020, the parties entered into a written, fixed-term tenancy agreement starting December 1, 2020 and ending May 1, 2021. Monthly rent was \$400 payable on the first of each month. The landlord testified that the parties entered into the written tenancy agreement because of a change in circumstances between her and the tenant.

The tenant testified that the landlord never told him that he would be required to pay monthly rent when he signed the written tenancy agreement. Rather, he testified that the landlord told him he needed to sign it "for her records" and he believed that the arrangement allowing him to reside in the rental unit remained the same as prior to his signing the agreement (that is, he was not required to pay any rent).

The tenant wrote his initials on the page of the tenancy agreement which contained the requirement that he pay monthly rent, although the initials were beside a different term (relating to the fixed-term nature of the agreement).

The parties agree that the tenant has not paid the landlord any amount of rent since moving into the rental unit in 2014. The landlord is not seeking any amount for the arrears incurred in December 2020. As stated above, she seeks a monetary order for unpaid rent for the months of January to April 2021 and for May 1 to May 10, 2021.

The tenant testified that does not believe that he is obligated to pay any amount of rent, and that C and the landlord have acted against him to evict him from the rental unit.

### **Analysis**

There is no dispute that the tenant has not paid the landlord any rent. There is no dispute as to the authenticity of the written tenancy agreement. As such, the only issue I must determine is whether the written tenancy agreement is a valid tenancy agreement, meaning that it replaced the prior oral agreement whereby the tenant was not required to pay any month rent.

The tenant does not dispute that he signed the tenancy agreement or that he initialed the page which clearly sets out his obligation to pay monthly rent.

As such, I find that the landlord has established a tenancy agreement on the terms set out in the written agreement exists on a *prima facie* basis. It then falls to the tenant to establish that, despite the fact he signed and initialed the written tenancy agreement, the written tenancy agreement should be either set aside or interpreted to have some meaning other than its plain language.

There is no evidence before me that the tenant did not have an opportunity to review the tenancy agreement before signing it. There is no evidence to suggest that he was coerced or pressured into signing it.

I do not understand the written agreement to be an agreement that the tenant made on behalf of C, putting into writing the arrangement by which C was paying the landlord \$400 per month. C's monthly payments pre-dated this document by at least three months. Additionally, I cannot see why, if C were required to pay rent, and the tenant was not, that the landlord would have prepared the tenancy agreement in the tenant's name and not in C's name.

Furthermore, based on the testimony of the parties, I do not understand that C was paying \$400 a month to the landlord on behalf of the tenant given that C's payments predated any obligation of the tenant to pay monthly rent.

As such, I find that the tenant is responsible for paying monthly rent in the amount of \$400 pursuant to the written tenancy agreement.

The order of possession issued following the prior hearing was included in the evidence package served on the tenant in April 2021. As such, per the order of possession, I find that the tenancy ended two days after it was served.

Accordingly, the tenancy ended in April 2021. However, the tenant did not vacate the rental unit until May 10, 2021. The tenant is obligated to compensate the landlord for the time he remained in the rental unit after the tenancy end, per section 57(3) of the Act, which states:

**What happens if a tenant does not leave when tenancy ended**

57(1) In this section:

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

As such, the tenant must pay the landlord \$133.30 ( $\$400.00 \div 30 \text{ days} = \$13.33$ ;  $\$13.33 \times 10 \text{ days} = \$133.30$ ).

Section 26 of the Act states:

**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.

So, the tenant was obligated to pay the landlord \$400 of the first day of each of January, February, March, and April 2021. He did not do this. I order that he pay the landlord \$1,600 to satisfy these arrears.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she may recover the filing fee from the tenant.

**Conclusion**

I dismiss the tenant's application, with leave to reapply.

I dismiss the landlord's application for an order of possession without leave to reapply.

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$1,833.30, representing the following:

Description	Amount
Rental Arrears (Jan to Apr)	\$1,600.00
Overholding Compensation (May 1 to May 10)	\$133.30

Filing Fee	\$100.00
<b>Total</b>	<b>\$1,833.30</b>

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 19, 2021

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Residential Tenancy Branch