



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, OPR-DR, FFL

### Introduction

On February 22, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent 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 June 10, 2021.

The Landlord attended the hearing; however, the Tenant did not attend at any point during the 14-minute teleconference. At the outset of the hearing, I advised the Landlord that recording of the hearing was prohibited. She was reminded to refrain from doing so and she acknowledged this term. All parties in attendance provided a solemn affirmation.

She advised that she served the Notice of Hearing and evidence package to the Tenant by registered mail on March 13, 2021 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was delivered on March 20, 2021. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlord’s 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 fees?

### 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 June 1, 2020, that rent was established at an amount of \$1,200.00 per month, and that it was due on the first day of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the Notice was served to the Tenant on December 17, 2020 by hand, with a witness. The Notice indicated that \$1,200.00 was owing on December 1, 2020 and that the effective end date of the tenancy was January 1, 2001. She stated that this date was clearly incorrect and was meant to be January 1, 2021.

She submitted that the Tenant did not pay any rent for December 2020, thus the Notice was served. In addition, she advised that the Tenant paid rent for January 2021 and March 2021. Other than that, the Tenant did not pay any rent for the other months and is in arrears as follows:

- December 2020: \$1,200.00
- February 2021: \$1,200.00
- April 2021: \$1,200.00
- May 2021: \$1,200.00
- June 2021: \$1,200.00
- Total rent in arrears: **\$6,000.00**

In addition to an Order of Possession for unpaid rent, the Landlord is also seeking a Monetary Order in the amount of **\$6,000.00**, which includes December 2020 rental arrears to June 2021 outstanding 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 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.

Section 68 of the *Act* states that if the Notice does not comply with Section 52, the Notice may be amended if it is clear that the person receiving the Notice knew, or should have known, the information that was omitted from the Notice, and that it is reasonable to amend the Notice.

When reviewing this Notice, it is evident that the date of 2001 is clearly a typographical mistake. Furthermore, based on all the information contained on the Notice, I do not find it reasonable that the Tenant did not understand that the effective end date of the tenancy on the Notice should have read 2021. As such, I am satisfied that the Notice should be amended to reflect the correct date.

With respect to the unpaid rent, the undisputed evidence before me is that the Tenant was served the Notice on December 17, 2020 in person. 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 December 17, 2020, he must have paid the rent in full or disputed the Notice by this date at the latest. As the Tenant did not pay the amount owing on the Notice or dispute the Notice within the five-day time frame, and 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 the 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. 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 **\$6,000.00** for the outstanding rental arrears.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

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 December 2020	\$1,200.00
Rental arrears for February 2021	\$1,200.00
Rental arrears for April 2021	\$1,200.00
Rental arrears for May 2021	\$1,200.00
Rental arrears for June 2021	\$1,200.00

Filing Fee	\$100.00
<b>Total Monetary Award</b>	<b>\$6,100.00</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 **\$6,100.00** 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: June 10, 2021

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Residential Tenancy Branch