



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GEC PEARSON  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenant: CNR, OLC

For the landlord: FFL, OPR-DR, OPRM-DR

### Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46; and
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62.

The landlord's application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:37 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord, represented by property manager KC (the landlord) and director AZ, attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Preliminary Issue – Tenant’s application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

**Rule 7 – During the hearing**

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlord affirmed she did not receive the notice of hearing and she was not aware of the tenant’s application.

Accordingly, in the absence of any attendance at this hearing by the tenant, I order the tenant’s application dismissed without leave to reapply.

Preliminary Issue – Service of the landlord’s application

I accept the landlord’s testimony that the tenant was served with the application and evidence (the materials) by registered mail on April 09, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on April 14, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Vacant Rental Unit

The landlord affirmed the tenant did not pay rent during the tenancy and that the rental unit was furnished by the landlord. On March 23, 2021 the landlord served the tenant with Notice in person. On May 11, 2021 the landlord noticed an unauthorized occupant in the tenant’s rental unit, the occupant moved out of the rental unit on the same day and abandoned the rental unit’s keys. The rental unit has been vacant since May 11, 2021. The tenant did not remove her personal belongings (clothing and food).

Regulation 24 states:

**(1)A landlord may consider that a tenant has abandoned personal property if**

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or  
**(b) subject to subsection (2), the tenant leaves the personal property on residential property**  
**(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or**  
(ii) from which the tenant has removed substantially all of his or her personal property.  
**(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if**  
(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or  
**(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.**  
(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(emphasis added)

Based on the landlord's convincing testimony, as the tenant has not occupied the rental unit since May 11, 2021 and has not paid rent, I find the tenant abandoned the rental unit on or around May 11, 2021. The landlord may store the tenant's personal property in accordance with Regulation Part 5.

The application for an order of possession is moot since the tenancy has ended and the landlord has possession of the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

#### Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend his application for \$3,200.00 in unpaid rent to include an additional \$3,200.00 for the unpaid rent of April and May 2021.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$6,400.00.

#### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is their obligation to present the evidence to substantiate their application.

The landlord testified the parties entered a fixed-term tenancy from February 01, 2021 to February 01, 2022. Rent is \$1,600.00 per month, due on the first day of the month. The tenant did not pay the security deposit. The tenancy agreement was submitted into evidence.

The landlord submitted a copy of the March 23, 2021 Notice into evidence. The Notice indicates \$4,800.00 in unpaid rent due on February 01, 2021. The effective date is April 01, 2021.

The landlord said the amount of \$4,800.00 is for rent due on February and March 01, 2021 (\$1,600.00 per month) and \$800.00 for the security deposit and \$800.00 for the pet damage deposit.

The landlord affirmed the tenant is in arrears of \$6,400.00 for February, March, April and May 2021 rent.

The landlord submitted into evidence a direct request worksheet (RTB-46) indicating the tenant did not pay rent in February and March 2021 in the amount of \$1,600.00 per month and a ledger indicating the tenant did not pay rent during the tenancy.

### Analysis

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenant agreed to pay monthly rent in the amount of \$1,600.00.

Based on the landlord's undisputed testimony, the tenancy agreement, and the direct request worksheet, I find the tenant is in arrears of \$6,400.00 for February, March, April and May 2021 (\$1,600.00 per month).

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act.

Per section 26(1) of the Act, the tenant must pay the landlord \$6,400.00.

As the landlord was successful in his application, I find that the landlord is entitled to recover the \$100.00 filing fee.

In summary, the landlord is entitled to \$6,500.00.

### Conclusion

Pursuant to sections 26 and 72 of the Act, I grant the landlord a monetary order in the amount of \$6,500.00.

The landlord is provided with this order in the above terms and the tenant must be served with this order. 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: July 14, 2021

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Residential Tenancy Branch