



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1284969 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 20, 2021 (the “Application”). This was originally a direct request that was adjourned to a hearing. The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 23, 2021 (the “Notice”)
- To recover unpaid rent
- For reimbursement for the filing fee

The Agent for the Landlord attended the hearing. Nobody attended the hearing for the Tenant. I explained the hearing process to the Agent. I told the Agent they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that the hearing package and evidence were posted to the door of the rental unit June 18, 2021. The Landlord had submitted a Proof of Service Notice of Direct Request Proceeding showing documents were posted to the door of the rental unit June 18, 2021. The Proof of Service was submitted June 21, 2021. I understand this Proof of Service to relate to the hearing package for this hearing given the dates involved as the direct request decision was issued June 15, 2021 and a new Notice of Hearing was sent to the Landlord June 15, 2021 to serve on the Tenant.

Based on the undisputed testimony of the Agent and Proof of Service, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(g) and 89(2)(d) of the *Residential Tenancy Act* (the “Act”). I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

In relation to the hearing package, section 89 of the *Act* states:

89 (1) An application for dispute resolution...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations.

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations.

As explained to the Agent during the hearing, when an Application for Dispute Resolution involves a monetary claim, the hearing package must be served in accordance with section 89(1) of the *Act* which does not allow for the hearing package to be posted to the door of the rental unit. It is only when an Application for Dispute Resolution is for an Order of Possession alone that the hearing package can be served in accordance with section 89(2) of the *Act*.

Given the above, I will consider the request for an Order of Possession and reimbursement for the filing fee. The request for a Monetary Order to recover unpaid rent is **dismissed with leave** to re-apply given the hearing package was not served in accordance with section 89(1) of the *Act* and was only served in accordance with section 89(2) of the *Act*.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

The Agent testified as follows.

The Landlord purchased the rental unit in January of 2021. There was a tenancy agreement between the previous owner of the rental unit and the Tenant. The Landlord took over the tenancy; however, there was no written tenancy agreement provided to

the Landlord. The Agent does not know when the tenancy started or whether the tenancy is a fixed term tenancy or month-to-month tenancy. Rent is \$475.00 per month due on the first day of each month. The Agent assumes the Tenant paid a \$237.50 security deposit.

The Notice was posted to the door of the rental unit April 23, 2021.

The Tenant failed to pay rent for January to April of 2021 and this is reflected on the Notice. The Tenant did not have authority under the *Act* to withhold rent. The Tenant has not paid any rent since being issued the Notice. The Agent is not aware of the Tenant disputing the Notice.

The Notice was submitted as evidence. The Notice states that the Tenant failed to pay \$1,900.00 due April 01, 2021. The Notice has an effective date of May 10, 2021.

A Proof of Service in relation to the Notice was submitted as evidence showing the Notice was posted to the door of the rental unit April 23, 2021.

### Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants have failed to pay rent. The relevant portions of section 46 state:

- 46 (1) 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.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date...

Based on the undisputed testimony of the Agent, I accept that the Tenant was required to pay \$475.00 in rent per month by the first day of each month pursuant to the tenancy agreement.

Based on the undisputed testimony of the Agent, I accept that the Tenant did not have authority under the *Act* to withhold rent for January to April of 2021. There is no evidence before me that the Tenant did have authority under the *Act* to withhold rent. I find the Tenant was required to pay \$475.00 by the first day of each month for January to April of 2021 pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of the Agent, I accept that the Tenant failed to pay rent for January to April of 2021. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve the Tenant with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Agent and the Proof of Service, I accept that the Notice was served on the Tenant in accordance with section 88(g) of the *Act*. I also accept that the Notice was served April 23, 2021. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice April 26, 2021.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on April 26, 2021 to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

I accept the undisputed testimony of the Agent that the Tenant has not paid any rent since being issued the Notice.

I accept the undisputed testimony of the Agent that they are not aware of the Tenant disputing the Notice. There is no evidence before me that the Tenant did dispute the Notice.

Given the Tenant did not pay the outstanding rent or dispute the Notice, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended May 10, 2021, the effective date of the Notice. The Tenant was required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by May 10, 2021.

The Landlord is entitled to an Order of Possession. Pursuant to section 55 of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

Given the Landlord was successful in the Application, the Landlord is entitled to \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. I issue the Landlord a Monetary Order for \$100.00.

### Conclusion

The Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to a Monetary Order in the amount of \$100.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: August 03, 2021

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Residential Tenancy Branch