



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CANADIAN PACIFIC RAILWAY  
COMPANY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 22 minutes. The landlord's agent ("landlord") and the landlord's lawyer 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 confirmed that he was the real estate specialist for the landlord company named in this application and that he had permission to speak on its behalf. The landlord confirmed that his lawyer had permission to speak on his behalf at this hearing.

I informed the landlord and his lawyer that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing by any party. At the end of the hearing, the landlord and the landlord's lawyer both affirmed under oath that they did not record this hearing.

I explained the hearing process to the landlord and his lawyer. They both had an opportunity to ask questions. Neither the landlord nor his lawyer made any adjournment or accommodation requests.

Preliminary Issue - Previous Hearing and Service of Documents

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlord's paper application only, not any participation by the tenant. An "interim decision," dated April 14, 2021, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlord was required to serve the interim decision and notice of reconvened hearing to the tenant. The landlord stated that the tenant was served with the above documents on April 16, 2021, by way of registered mail to the rental unit, where the tenant is residing. The landlord provided a Canada Post tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the interim decision and notice of reconvened hearing on April 21, 2021, five days after its registered mailing.

Preliminary Issue - Service of Landlord's Original Application and 10 Day Notice

The landlord claimed that the tenant was served with the landlord's original application for dispute resolution by direct request on March 24, 2021, by way of registered mail to the rental unit, where the tenant is residing. The landlord provided a Canada Post tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's original application on March 29, 2021, five days after its registered mailing.

The landlord stated that the tenant was served with the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 8, 2021 ("10 Day Notice") by way of posting to the tenant's rental unit door, where the tenant is residing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on February 11, 2021, three days after its posting.

During the hearing, the landlord was unable to confirm the dates and amounts of all the rent payments made by the tenant. The landlord was given ample time during this hearing to search for the above information but was unable to locate all of it. The landlord's lawyer stated that since the landlord did not have complete information regarding the rent, the landlord would pursue a future application for a monetary order for unpaid rent. This claim is dismissed with leave to reapply.

### Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on July 31, 2002. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. No security or pet damage deposits were paid by the tenant. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord stated the following facts. The landlord seeks an order of possession based on the 10 Day Notice and the \$100.00 application filing fee. The landlord issued the 10 Day Notice for unpaid rent of \$6,000.00 due on February 1, 2021. The tenant failed to pay rent of \$1,000.00 for each month from September 2020 to February 2021, totaling \$6,000.00. The tenant made partial rent payments of \$1,000.00 each on February 16, 2021, February 17, 2021, and April 13, 2021, totalling \$3,000.00. The tenant made additional rent payments after the above dates, but the landlord does not know the amounts or dates at this time. There was additional unpaid rent from March to August 2021. The tenant currently owes an unpaid rent balance of \$8,000.00.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on February 8, 2021, within five days of receiving the 10 Day Notice. Although the tenant made partial rent payments in February and April 2021, he did not pay the full rent owing of \$6,000.00. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on February 23, 2021, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by February 23, 2021. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

I find that the landlord did not waive its rights to pursue the 10 Day Notice, despite the fact that the tenant paid partial rent after the effective date on the notice. The landlord's lawyer stated that any partial rent payments made by the tenant were applied against the rent arrears and the tenant said he would move out in spring. The landlord stated that he sent an email to the tenant on April 27, 2021, asking if he reviewed the hearing documents and requesting feedback. I find that the landlord served the 10 Day Notice for unpaid rent to the tenant, as well as this application for an order of possession, and continued to pursue both at this hearing without cancelling the hearing.

As the landlord was only partially successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant. The landlord was unable to provide sufficient evidence to pursue the landlord's claim for a monetary order for unpaid rent, despite being given ample time during this hearing to locate this information. As noted above, the landlord's claim for a monetary order for unpaid rent was dismissed with leave to reapply at this hearing.

### Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

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: August 03, 2021

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Residential Tenancy Branch