



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1253737 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPR-DR, MNR-DR, FFL**

### **Introduction**

On May 12, 2021, an arbitrator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. He did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

*In this case, the Landlord did not submit a written tenancy agreement. Rather, the Landlord submitted a document which states: "[The Tenant] has not signed any tenancy agreement with our clients for the basement suite that he is renting...Our clients purchased the subject property while [the Tenant] was still a tenant at the property with no rental agreement record transferred to the Buyer." Accordingly, I find that the evidentiary material provided by the Landlord does not comply with the requirements of Policy Guideline #39, giving rise to deficiencies and ambiguities that cannot be addressed during a Direct Request Proceeding, including the amount of rent due and the day of the month on which rent is due.*

I have been delegated authority under the *Act* to consider the landlord's application 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 from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. to enable the tenant to call into this teleconference

hearing scheduled for 11:00 a.m. 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.

The landlord attended the hearing, represented by property manager, JTG ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he served the tenant with the Notice of Reconvened Hearing ("Notice") and evidence by registered mail to the tenant's residential address on May 19, 2021. The tracking number for the mailing is recorded on the cover page of this decision. The tenant is deemed served with the Notice and evidence five days after mailing by registered mail, on May 24, 2021 in accordance with sections 89 and 90 of the Act. In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenant.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover his filing fee?

#### Background and Evidence

The landlord's agent gave the following undisputed testimony. The tenancy began with a different landlord some time ago. No tenancy agreement was provided to this landlord when they purchased it from the original landlord. The current landlord's agent testified his client purchased the property some time in April or May of 2020 and that he became the property manager on December 1, 2020.

The landlord's agent testified that the tenant paid his rent of \$1,300.00 per month on the first day of the month, diligently throughout 2020. The tenant stopped paying rent on February 1, 2021. The tenant advised him that he had lost his job and the landlord confirmed that fact by calling the tenant's employer who told him not to call back as the tenant was no longer an employee.

On February 16, 2021, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the tenant's door. A signed, witnessed proof of service document was provided as evidence.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, also provided as evidence states the tenant failed to pay \$1,300.00 that was due on February 1, 2021. It provides an effective date of February 26, 2021 and is signed by the landlord's agent on February 16, 2021. The landlord testified that the tenant has not paid February's rent since receiving the Notice and has not paid rent for any subsequent month. The landlord has not been served with any notice disputing the notice to end tenancy.

### Analysis

- Order of Possession

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is deemed served five days after it was posted to the tenant's door, or February 19, 2021 in accordance with sections 88 and 90 of the Act.

Section 46 of the Act states:

- (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.

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. 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 tenant's failure to take either of these actions within five days has led to the end of the tenancy on the effective date of the notice.

As the tenant was deemed served on February 19, 2021, the effective date on the Notice is automatically corrected to March 1, 2021. Since the tenant has not vacated the rental unit after the effective date, I award the landlord an Order of Possession effective 2 days after service upon the tenant.

- Monetary Order

I accept the landlord's undisputed testimony that the tenant was obligated to pay \$1,300.00 rent on the first day of each month. The tenant has failed to pay rent for the months of February through August. As this tenancy is ending, I award the landlord a

monetary order for each month the tenant failed to pay rent, with August's rent being prorated to the date of this decision. [ $\$1,300.00 / 31 \text{ (days)} \times 5 \text{ (days)} = \$209.67$ ]

The landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application pursuant to section 72 of the Act .

Item	Amount
Rent from February 1 to July 31, 2021 (6 months)	\$7,800.00
August rent (prorated)	\$209.67
Filing fee	\$100.00
<b>Total</b>	<b>\$8,109.67</b>

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of **\$8,109.67**.

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 05, 2021

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Residential Tenancy Branch