



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Prospero International Realty Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **MNU-DR, OPU-DR-PP**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice ") pursuant to sections 46 and 55;

### *Direct Request Hearing*

This hearing is a continuation of a Direct Request Proceeding which resulted in a Decision dated July 7, 2021. The Adjudicator directed in part as follows:

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an arbitrator appointed under the *Act* is required in order to determine the details of the landlord's application.

*Service*

The landlord provided affirmed testimony that they served the tenant with the Notice of Reconvened Hearing, the interim Decision, and all other required documents upon the tenant in compliance with the Adjudicator's Decision. The landlord testified they sent the documents by registered mail to the tenant on July 7, 2021.

The landlord provided the Canada Post Tracking Number in support of service.

When asked if he received the documents, the tenant replied that he had not received the documents as he had "lost his key".

Further to the landlord's credible testimony and supporting documents, I find the landlord served the tenant with the Notice of Reconvened Hearing, the interim Decision, and all other required documents on July 12, 2021 pursuant to sections 89 and 90.

*Preliminary matter: amendments*

The landlord also requested two amendments to the landlord's application to change the monetary order for outstanding rent to \$19,905.92 and to authorize the landlord to apply the security deposit and pet deposit ("the deposits") in the total amount of \$2,300.00 to any award. The landlord's application, submitted on June 11, 2021, pre-dated the due date for amounts owing for rent for subsequent months of July and August 2021.

Also, the landlord testified they overlooked asking that the security deposit to applied to the award and requested authorization to do so.

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

The tenant consented to the Amendments during the hearing.

The total monetary order requested by the landlord is amended to \$19,905.92. The landlord is authorized to apply the deposits to the award.

The tenant consented to a Monetary Order in the amount of **\$17,605.92**.

The landlord's claim is amended as set out in the following table:

ITEM	AMOUNT
Rent outstanding	\$19,905.92
(Less deposits)	(\$2,300.00)
<b>TOTAL CLAIM</b>	<b>\$17,605.92</b>

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

As stated, the tenant agreed to a Monetary Order in the amount requested by the landlord of **\$17,605.92**.

The only issue is the claim for an Order of Possession.

The landlord submitted a copy of the lease. The parties agreed on the background of the tenancy as follows.

INFORMATION	DETAILS
Type of tenancy	Monthly
Date of beginning	January 24, 2020
Date of ending	ongoing

Monthly rent payable on 1 <sup>st</sup>	\$2,300.00
Security and pet deposit	\$2,300.00
Forwarding address provided	no
Date of landlords' Application	June 11, 2021

The landlord testified the landlord posted the Ten-Day Notice to the tenant's door on June 1, 2021 thereby effecting service under section 90 of the Act on June 4, 2021. The landlord submitted a copy of the Ten-Day Notice as evidence which is in the standard RTB form. The tenant agreed with the landlord's testimony.

The Ten-Day Notice provides the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date of (corrected) June 14, 2021. The landlord testified the tenant did not pay the amount owing in full. The tenant agreed to the landlord's testimony.

The tenant did not apply to cancel the Notice.

The landlord requested an Order of Possession and a Monetary Order as agreed. The only issue is the Order of Possession.

The tenant continues to occupy the unit.

The tenant stated he is in a "lot of financial hardship" and was unable to find employment. He understands he must leave but requested an effective date of August 31, 2021 for the Order of Possession.

### Analysis

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*/

I accept the landlord's testimony, as acknowledged by the tenant, that the tenant was served with the Ten-Day Notice as testified (by posting to the door of the unit) and in accordance with the *Act*.

I accept the landlord's testimony and documentary evidence, as acknowledged by the tenant, and find the tenant did not pay the overdue amount or dispute the Ten-Day Notice within the five-day period following service.

Pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice requiring the tenant to vacate the rental unit by June 14, 2021.

Based on the landlord's testimony and evidence including testimony that the tenant continues to reside in the unit, I find the landlord has met the burden of proof on a balance of probabilities for an Order of Possession on two days' notice.

I therefore grant the landlord an Order of Possession effective two days after service.

Based on the uncontradicted testimony and documentary evidence of the landlord and the consent of the tenant, I grant the landlord a monetary award pursuant to section 67 for outstanding rent in the amount of **\$17,605.92**.

My award to the landlord is summarized in the following table:

ITEM	AMOUNT
Rent outstanding	\$19,905.92
(Less deposits)	(\$2,300.00)
<b>TOTAL CLAIM - DAMAGES</b>	<b>\$17,605.92</b>

Conclusion

I grant the landlord a Monetary Order for **\$17,605.92** and an Order of Possession effective two days after service.

These Orders must be served on the tenant. If the tenant fails to comply with these Orders, the landlord may file the Orders with the Courts of British Columbia to be enforced as Orders 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: August 06, 2021

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Residential Tenancy Branch