



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pacific Quorum Properties Inc  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNR, RP  
OPR-DR, MNR-DR, FFL

### **Introduction**

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities and for an order that the landlord make repairs to the rental unit or property. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The landlord's application was made by way of the Direct Request process which was referred to this participatory hearing, joined to be heard with the tenant's application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The landlord also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

At the commencement of the hearing the landlord's agent submitted that the tenant has not served the landlord with any evidentiary material or the Tenant's Hearing Package, but well over 100 emails have been received from the tenant and/or the tenant's lawyer. The tenant submitted that earlier this month his lawyer from another Province sent an email to the landlord, which the tenant believed included the Hearing Package. The *Residential Tenancy Act* requires an applicant to serve each respondent with the Hearing Package within 3 days of receiving a notice of hearing from the Residential Tenancy Branch. The tenant received the Hearing Package from the Residential Tenancy Branch on May 31, 2021 to serve on the landlord. Since the tenant has not done so within the required 3 days, I dismiss the tenant's application.

All evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on October 1, 2020. An error exists in the tenancy agreement, a copy of which has been provided for this hearing, in that it states that the fixed term expires on September 30, 2020, which should show an expiry date of September 30, 2021, and then the tenancy reverted to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$1,500.00 is payable on the 1<sup>st</sup> day of each month, in addition to \$30.00 per month for parking. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent further testified that the tenant has not paid any rent for the months of March through August inclusive, and as of June 1, 2021 the tenant was in arrears the sum of \$6,604.72, which includes unpaid parking fees.

The landlord's agent prepared a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) and emailed it to the building caretaker to serve to the tenant. A copy of the Notice has been provided for this hearing and it is dated May 14, 2021 and contains an effective date of vacancy of May 27, 2021 for unpaid rent in the amount of \$5,074.72 that was due on May 1, 2021. The landlord's agent testified that the amount includes unpaid parking fees. Attached to the Notice is a Tenant Ledger. Also provided is a Proof of Service document and a photograph of what appears to be 2 pages of a Proof of Service document attached to a door.

**The landlord's witness** is the caretaker of the building and testified that the landlord's agent sent a notice to end the tenancy to her by email, and that it was signed by the landlord's agent, but does not recall the date that was written on it. The witness posted it to the door of the rental unit on May 14, 2021. It was signed by the witness and the witness' son.

**The tenant** testified that the landlord didn't read any of the tenant's emails, so the landlord's agent doesn't even know that the tenant made an offer to pay extra rent each month until the arrears are paid. The tenant spoke with the caretaker offering to pay \$1,500.00 in July but she said she wasn't allowed to accept any rent because the matter is scheduled for Arbitration.

The rental unit is an apartment in a complex, and the tenant received 1 page of a notice taped to the door, but does not recall the date.

### Analysis

I have reviewed all of the landlord's evidentiary material, and note in particular that the photograph of the documents attached to the door appears to be 2 pages of a Proof of Service document, not a notice to end the tenancy. The landlord's witness testified that she and her son signed it, and I accept that. However, the witness also testified that she signed the Notice, and then testified that the landlord's agent signed it, but does not recall what date was on the Notice. The witness seemed very confused.

A landlord may not refuse rent, even if a hearing is scheduled. I accept the undisputed testimony of the tenant that he offered to pay rent to the caretaker, which was refused because this hearing was scheduled.

In the circumstances I am not satisfied that the landlord has established that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that was signed and dated by the landlord. The photograph provided in the landlord's evidence appears to show that the Proof of Service document was posted to the door, not the Notice. Therefore, I dismiss the landlord's application for an Order of Possession.

The landlord has also applied for a monetary order for unpaid rent and the Tenant Ledger shows that other charges exist, such as parking, returned cheque charges and hydro chargeback. The landlord's agent also testified that the tenant has not paid any rent for the months of March to August, 2021 inclusive, and as at June 1, 2021 the tenant was in arrears the sum of \$6,604.72, which includes other fees. I accept the undisputed testimony of the landlord's agent that the tenant is in arrears of rent the sum of \$9,000.00 for unpaid rent from March to August, 2021, and I grant a monetary order in that amount in favour of the landlord.

The landlord has not applied for monetary compensation for damage or loss for the tenant's failure to comply with the tenancy agreement, such as parking fees and other fees

contained in the Tenant Ledger. The landlord is at liberty to apply for further fees and losses.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

The landlord's application for an Order of Possession is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$9,100.00.

This order is final and binding and may be enforced.

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 26, 2021

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Residential Tenancy Branch