



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0821134 BC LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

This hearing dealt with cross-applications filed by the parties. On May 21, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

On June 2, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on August 27, 2021.

R.N. attended the hearing as an agent for the Landlord; however, the Tenant did not attend at any point during the 13-minute teleconference. At the outset of the hearing, I advised the parties that recording of the hearing was prohibited. He was reminded to refrain from doing so and he acknowledged this term. As well, he provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:13 AM. Only an agent for the Landlord dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Tenant did not dial in and I also confirmed from the teleconference system that the only party who had called into this teleconference was a representative of the Landlord.

As the Tenant did not attend the hearing by 11:13 AM, I find that his Application for Dispute Resolution has been abandoned. As such, I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

R.N. advised that he served the Notice of Hearing and evidence package to the Tenant by registered mail on June 18, 2021 (the registered mail tracking number is noted on the first page of this Decision). Based on this undisputed evidence, I am satisfied that the Tenant was deemed to have received the Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

R.N. advised that the tenancy started on February 1, 2020, that rent was currently established at an amount of \$1,800.00 per month, and that it was due on the first day of each month. A security deposit was not paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He testified that the Notice was served to the Tenant by registered mail on May 14, 2021. The Notice indicated that \$7,200.00 was owing for rent on May 14, 2021. The effective end date of the tenancy was noted as May 31, 2021.

He submitted that the Tenant would ordinarily pay rent by either cash or electronic transfer; however, he did not pay any rent for January, February, March, or May 2021. Thus, the Notice was served. As well, the Tenant has not paid any rent since service of the Notice either. He stated that the Tenant did not have any authorization to withhold

any amount of rent from January 2021 onwards. As such, the Landlord is seeking an Order of Possession and a Monetary Order in the amount as follows:

- January 2021 rent: \$1,800.00
- February 2021 rent: \$1,800.00
- March 2021 rent: \$1,800.00
- May 2021 rent: \$1,800.00
- June 2021 rent: \$1,800.00
- July 2021 rent: \$1,800.00
- August 2021 rent: \$1,800.00
- Total rental arrears: **\$12,600.00**

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant was served the Notice on May 14, 2021. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was served on May 14, 2021 by registered mail, the Notice was deemed

received on May 19, 2021. As such, the Tenant must have paid the rent in full by May 24, 2021 or disputed the Notice by the next business day of May 25, 2021 at the latest. As the undisputed evidence is that the Tenant did not pay any rent owing, as the Tenant's Application to dispute the Notice was dismissed, and as he did not have a valid reason under the *Act* for withholding the rent, I am satisfied that the Tenant breached the *Act* and jeopardized his tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

Regarding the amount of unpaid rent, as the undisputed evidence is that the Tenant is in arrears for the rent up until the date of the hearing, I grant the Landlord a monetary award in the amount of **\$12,600.00**.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenant to the Landlord**

Item	Amount
Rental arrears for January 2021	\$1,600.00
Rental arrears for February 2021	\$1,600.00
Rental arrears for March 2021	\$1,600.00
Rental arrears for May 2021	\$1,600.00
Rental arrears for June 2021	\$1,600.00
Rental arrears for July 2021	\$1,600.00
Rental arrears for August 2021	\$1,600.00
Filing Fee	\$100.00
<b>Total Monetary Award</b>	<b>\$12,700.00</b>

#### Conclusion

The Tenant's Application for Dispute Resolution is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$12,700.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: August 27, 2021

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Residential Tenancy Branch