



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNRL, FFL;    CNR, OLC, FFT

### Introduction

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

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

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 6, 2021 ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 27 minutes. The landlord and his two agents, "landlord JG" and "landlord AG" 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 hearing began at 9:30 a.m. and ended at 9:57 a.m. I monitored the teleconference line throughout the hearing. 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, his two agents, and I were the only people who called into this teleconference.

The landlord confirmed that he owned the rental unit. He stated that his two agents had permission to represent him at this hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* does not permit recording of this hearing by any party.

I explained the hearing process to the landlord and his two agents. They had an opportunity to ask questions. They confirmed that they were ready to proceed with this hearing. They did not make any adjournment or accommodation requests.

Landlord AG stated that the tenant was served with the landlord’s application for dispute resolution, notice of hearing and first evidence package on April 24, 2021, by way of registered mail to the rental unit where the tenant is still residing. The landlord provided a Canada Post receipt and landlord AG confirmed the 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 application, notice of hearing and first evidence package on April 29, 2021, five days after its registered mailing.

Landlord JG stated that he personally served the tenant with the landlord’s amendment and second evidence package on July 8, 2021. Landlord AG confirmed that she witnessed this service. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord’s amendment and second evidence package on July 8, 2021.

The landlord confirmed that he personally served the tenant with the landlord’s 10 Day Notice on April 6, 2021, and someone else witnessed the service. The landlord provided a signed, witnessed proof of service to confirm same. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord’s 10 Day Notice on April 6, 2021. In his application, the tenant stated that he personally received the 10 Day Notice on April 6, 2021.

#### Preliminary Issue - Amendment to Landlord’s Application

At the outset of this hearing, landlord AG stated that the tenant has paid rent in full, including for August 2021. She said that the landlord was no longer seeking a monetary order for unpaid rent of \$1,350.00 for April 2021. Accordingly, this portion of the landlord’s application is dismissed without leave to reapply.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to include a claim for an order of possession for cause, based on the landlord's One Month Notice to End Tenancy for Cause, dated June 21, 2021 ("1 Month Notice"). The landlord provided a copy of the notice and the signed amendment on the approved RTB form, dated July 6, 2021, which was filed on July 7, 2021. As noted above, I found that the tenant was personally served with this amendment on July 8, 2021. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim, despite the fact that he did not attend this hearing.

The landlord confirmed that he posted a copy of the 1 Month Notice to the tenant's rental unit door on June 21, 2021, and someone else witnessed the service. The landlord provided a signed, witnessed proof of service to confirm same. In accordance with section 88 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on June 24, 2021, three days after its posting.

However, as I have made a decision based on the landlord's 10 Day Notice below, I do not need to examine the landlord's 1 Month Notice. This claim is dismissed with leave to reapply.

#### Preliminary Issue – Dismissal of Tenant's Application

Landlord AG confirmed that she did not receive a copy of the tenant's application for dispute resolution hearing package. She said that the tenant verbally told her that he filed an application to dispute the landlord's 10 Day Notice.

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

### 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 his application?

### Background and Evidence

Landlord AG stated the following facts. This tenancy began on February 5, 2021. Monthly rent in the amount of \$1,350.00 is payable on the first day of each month. No security or pet damage deposits were paid by the tenant. No written tenancy agreement was signed, as only a verbal agreement was reached. The tenant continues to reside in the rental unit.

Landlord AG confirmed that the landlord seeks an order of possession for unpaid rent based on the 10 Day Notice and to recover the \$100.00 filing fee paid for his application.

Landlord AG testified that the 10 Day Notice was issued to the tenant for unpaid rent of \$1,350.00 due on April 1, 2021. She stated that rent of \$1,350.00 was paid by the tenant on April 16, 2021. Landlord JG confirmed that he personally served a rent receipt for “use and occupancy only” to the tenant on April 17, 2021. A copy of the receipt was provided for this hearing.

Landlord AG stated that 10 Day Notices were issued to the tenant on May 2, 2021 and June 2, 2021, for unpaid rent of \$1,350.00 due on May 1, 2021 and June 1, 2021, respectively. The landlord confirmed that he personally served rent receipts for “use and occupancy only” to the tenant on May 5, 2021 and June 2, 2021, when the tenant paid the full rent of \$1,350.00 on each of the above dates. Landlord AG said that rent of \$1,350.00 each were paid on July 1, 2021 and August 2, 2021, so no 10 Day Notices were issued to the tenant for the above months. The landlord confirmed that he personally served rent receipts for “use and occupancy only” to the tenant on July 1, 2021 and August 2, 2021, for each month respectively.

### Analysis

The landlord and his two agents provided undisputed evidence, as the tenant did not attend this hearing.

The tenant failed to pay the full rent due on April 1, 2021, within five days of receiving the 10 Day Notice. The tenant paid the full rent of \$1,350.00 on April 16, 2021, which is more than 5 days after he personally received the notice on April 6, 2021. The tenant filed an application to dispute the notice on April 12, 2021, pursuant to section 46(4) of the *Act*. However, the tenant did not appear at this hearing to provide his evidence.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on April 16, 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 April 16, 2021. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, 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 his right to pursue the 10 Day Notice, even though the tenant paid full rent after the effective date of April 16, 2021. I accept the undisputed affirmed testimony of the landlord and his two agents, that rent receipts for "use and occupancy only" were issued to the tenant from April to August 2021. The landlord provided a copy of the April 2021 rent receipt. The landlord continued to pursue the 10 Day Notice, the order of possession, and an end to this tenancy, at this hearing. The tenant applied to dispute the 10 Day Notice, which was scheduled for this hearing.

As the landlord was partially successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. The tenant must be served with this Order as soon as possible. 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.

I issue a monetary order in the landlord's favour in the amount of \$100.00 against the tenant. 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.

The landlord's application for an order of possession for cause, based on the 1 Month Notice, dated June 21, 2021, is dismissed with leave to reapply.

The landlord's application for a monetary order for April 2021 unpaid rent of \$1,350.00, 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 16, 2021

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Residential Tenancy Branch