



# 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      OPR-PP, MNRL-S, FFL

### Introduction

On May 11, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (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 9:30 AM on September 20, 2021.

J.E. attended the hearing as an agent for the Landlord; however, the Tenant did not attend at any point during the 22-minute teleconference. At the outset of the hearing, I advised J.E. 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.

He advised that the Tenant was served the Notice of Hearing and evidence package by registered mail on May 25, 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.

J.E. advised that the tenancy started on July 15, 2020, that rent was currently established at an amount of \$1,000.00 per month, and that it was due on the first day of each month. A security deposit of \$500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He testified that the Notice was served to the Tenant by placing it in the Tenant's mailbox on April 6, 2021. The Notice indicated that \$1,900.00 was owing for rent on April 1, 2021. The effective end date of the tenancy was noted as April 19, 2021.

He submitted that the Tenant did not pay the arrears owing prior to and including April 2021 rent. Thus, the Notice was served. As well, the Tenant had only paid portions of rent since service of the Notice. He stated that the Tenant did not have any authorization to withhold any amount of rent. As such, the Landlord is seeking an Order of Possession and a Monetary Order. He referenced a rental ledger submitted as documentary evidence to illustrate the rent payments made in the amounts as follows:

- August 2020: \$500.00
- September 2020: \$500.00
- October 2020: \$1,200.00
- November 2020: \$400.00
- December 2020: \$1,500.00
- January 2021: \$1,400.00
- February 2021: \$0.00
- March 2021: \$1,600.00
- April 2021: \$1,500.00

- May 2021: \$955.00
- June 2021: \$0.00
- July 2021: \$0.00
- August 2021: \$0.00
- September 2021: \$140.00
- Total rental arrears: **\$4,305.00**

He also submitted that the Tenant was served a payment plan on December 12, 2020 where the Tenant's August 2020 \$500.00 rental arrears would be owed as of January 1, 2021 in the amount of \$100.00 over the next five months. However, the Tenant did not pay this extra rent. A copy of this payment plan was submitted as documentary evidence as well.

### 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 Landlord complies 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 April 6, 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 April 6, 2021 by being placed in the Tenant's mailbox, the Notice was deemed received on April 9, 2021. As such, the Tenant must have paid the rent in full or disputed the Notice by April 14, 2021 at the latest. As the undisputed evidence is that the Tenant did not pay the total rent owing or dispute the Notice by April 14, 2021, 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 **\$4,305.00**.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of this claim.

Pursuant to Sections 38, 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 Landlords**

Item	Amount
Rental arrears owing up until September 2021	\$4,305.00
Filing Fee	\$100.00
Security Deposit	-\$500.00
<b>Total Monetary Award</b>	<b>\$3,905.00</b>

Conclusion

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 **\$3905.00** 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: September 20, 2021

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Residential Tenancy Branch