



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNRL, FFL

### Introduction

On May 29, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to request an Order of Possession for Cause, and to be compensated for the cost of the filing fee.

On July 10, 2021, the Landlord submitted an Application for Dispute Resolution by Direct Request under the Act. The Landlord requested an Order of Possession for the rental unit for unpaid rent, a Monetary Order to recover unpaid rent, and to be compensated for the cost of the filing fee. The Landlord’s first Application was crossed with the Landlord’s second Application and the matters were set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 26-minute hearing. The Landlord submitted evidence and testified that they personally served the Tenant with the Notice of Dispute Resolution Proceeding by sending it via registered mail on August 13, 2021 (tracking number is noted on the face page of this Decision) and advised that the package had been returned to him. The Landlord stated that the Tenant attempted to refuse service of the 10 Day Notice to End Tenancy, and also refused to pick up the Notice of Dispute Resolution Proceedings package from Canada Post.

*Residential Tenancy Policy Guideline – 12. Service Provisions* states where a document is served by Registered Mail, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

As such, I find that the Tenant is deemed to have received the Notice of Dispute Resolution Proceeding on August 18, 2021, in accordance with Section 89 and 90 of the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a 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.

As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

The Landlord was provided the opportunity to present their affirmed testimony and documentary evidence at the hearing.

### Preliminary Matter – Issues

The Landlord stated that he would like to request an Order of Possession for the rental unit and is not concerned about making a claim for unpaid rent.

I find that the Landlord has removed all the issues through amendment, in accordance with Rules of Procedure 4.2, except for their request for an Order of Possession for the rental unit and compensation for the filing fee.

### Issues to be Decided

Should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

### Background and Evidence

The Landlord provided testimony and documentary evidence to support the following:

- Tenancy Agreement that stated the month-to-month tenancy began on February 1, 2019, with a monthly rent of \$750.00; due on the first of each month.
- Security deposit collected in the amount of \$375.00.
- Tenant failed to pay rent for June through to September 2021.
- Tenant served with a 10 Day Notice to End Tenancy for Unpaid Rent, dated June 18, 2021 (the “10 Day Notice”), on June 18, 2021. The Landlord and his witness attended to the Tenant’s rental unit for personal service; however, the Tenant

refused to accept the 10 Day Notice; therefore, the Landlord posted the 10 Day Notice to the door of the rental unit.

- The Tenant has not paid any rent and is still living in the rental unit.
- Landlord is requesting an Order of Possession.

### Analysis

Based on the Landlord's testimony and evidence, I find that the Tenant was required to pay rent in the amount of \$750.00 by the first day of each month.

Section 90 of the Act specifies that a document that is posted on a door is deemed to be received on the third day after it is posted. In this case, I find that the Tenant received the 10 Day Notice on June 21, 2021.

As the Tenant is deemed to have received the 10 Day Notice on June 21, 2021, I find the earliest effective date of the notice is July 1, 2021, pursuant to section 53 of the Act.

I find the Tenant failed to pay the rent in full, as identified as owing in the 10 Day Notice, within five days of receiving the 10 Day Notice, pursuant to section 46(4) of the Act.

I have no evidence in front of me that the Tenant has made an Application pursuant to section 46(4) of the Act within five days of receiving the 10 Day Notice.

In accordance with section 46(5) of the Act, the Tenant's failure to take either of these actions within five days led to the end of this tenancy on the effective date of the 10 Day Notice. In this case, this required the Tenant to vacate the premises by July 1, 2021. As that has not occurred, I find that the Landlord is entitled to a two-day Order of Possession, in accordance with section 55 of the Act.

The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit within the two days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

I find that one of the Landlord's Application has merit, and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

As such, I authorize the Landlord to deduct \$100.00 from the security deposit.

As the Landlord was successful with one of their Applications and the other one wasn't considered, I find that the Landlord is not entitled to compensation for a second filing fee.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served 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.

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 28, 2021

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Residential Tenancy Branch