



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNR-DR, OPR-DR, FFL, MNDCL

### **Introduction**

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent and money owed pursuant to section 67.

While the landlord's agent, HL "(landlord)", attended the hearing by way of conference call, the tenant did not. I waited until 11:12 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord testified that after the landlord has received the interim decision dated May 5, 2021, the landlord served with the landlord's application for dispute resolution hearing package to the tenant on May 14, 2021 by way of registered mail. The landlord served the tenant with an amendment of the application by way of registered mail on July 26, 2021. The landlord provided copies of the receipts and the tracking information for these packages in their evidentiary materials. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's packages, five days after its registered mailing.

The landlord testified that the tenant was served with the 10 Day Notice by way of registered mail on March 3, 2021. The landlord provided the receipt and tracking information in their evidentiary materials. In accordance with sections 88 and 90 of the

Act, I find the tenant deemed served with the 10 Day Notice on March 8, 2021, 5 days after mailing.

Although the landlord had applied for a monetary Order of \$7,779.33 in their initial claim, since they applied another \$13,00.00 in outstanding rent had become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$7,779.33 to \$20,779.33 to reflect the unpaid rent that became owing by the time this hearing was convened.

### **Preliminary Issue: Incorrect Dates on Notice to End Tenancy**

A copy of the 1 Month Notice was submitted for this hearing. Section 52 of the *Act* states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

I note that the landlord had incorrectly noted the year as 2020 instead of 2021 for when the 10 Day Notice was signed, and for the effective date of the 10 Day Notice. On the second page, the landlord had provided the correct year for the unpaid rent. Although I find the dates to be incorrect, I find that the 10 Day Notice is still compliant with section 52 of the *Act* as the 10 Day Notice was signed and dated by the landlord, and the landlord had stated the effective date of the 10 Day Notice. I find that the incorrect dates to be an error that is obvious on its face to all parties as the second page does note that the 10 Day Notice was for a failure to pay the March 2021 rent, and the 10 Day Notice was served immediately after that. On a balance of probabilities, I do not find that the incorrect year would have lead either party to conclude that the Notice was issued a year earlier. Furthermore, section 53 of the *Act* states that incorrect effective dates are automatically changed. Accordingly, the effective date is automatically corrected to March 19, 2021. In consideration of the requirements of the *Act*, I find the 10 Day Notice to be valid, and complies with section 52 of the *Act*.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to monetary compensation for unpaid rent and utilities?

Is the landlord entitled to recover the filing fee for this application?

### **Background and Evidence**

The landlord testified regarding the following facts. This tenancy originally began as a fixed-term tenancy on September 27, 2018, and continued on a month-to-month basis after September 26, 2019. Monthly rent is currently set at \$2,600.00, payable on the first of the month. The landlord still holds the security deposit of \$1,300.00.

The landlord served the 10 Day Notice, dated March 2, 2021 on the tenant for failing to pay the March 2021 rent. The landlord testified that the tenant has not paid any rent since the 10 Day Notice was served on the tenant, nor has the tenant paid the outstanding utilities which had accrued to \$2,579.33. The landlord provided copies of the utility bills and demand letters, which have been served on the tenant.

The landlord confirmed that the landlord does not reside at the same address as the tenant, which was a possible issue brought up by the adjudicator in the Direct Request decision.

The landlord is seeking an Order of Possession pursuant to the 10 Day Notice, a monetary order for the unpaid rent and utilities, as well as recovery of the filing fee.

### **Analysis**

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or pay the outstanding rent. I find that the tenant has failed to file an application for dispute resolution within the five days of service granted under section 46(4) of the *Act*, nor did the tenant pay the outstanding rent. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, March 19, 2021.

As noted above, I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. In this case, this required the tenant and anyone on the premises to vacate the

premises by March 19, 2021. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

**Section 26** of the *Act*, in part, states as follows:

**Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The landlord provided undisputed evidence that the tenant failed to pay \$18,200.00 in outstanding rent for this tenancy. On this basis, I allow the landlord to recover the unpaid rent.

I am also satisfied that the landlord provided undisputed evidence to support that the tenant owes \$2,579.33 in outstanding utilities, and I allow the landlord a monetary order for this amount.

The landlord continues to hold the tenant's security deposit of \$1,300.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

**Conclusion**

I find that the landlord's 10 day Notice is valid and effective as of March 19, 2021.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord's monetary claim as set out in the table below. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim. The landlord is issued a monetary order in the amount of \$19,579.33,

Unpaid Rent for March 2021-September 2021	\$18,200.00
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Unpaid Utilities for period up to May 2021	2,579.33
Filing Fee	100.00
Less Security Deposit Held	-1,300.00
<b>Total Monetary Order</b>	<b>\$19,579.33</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 8, 2021

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Residential Tenancy Branch