



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR OPR-DR FFL

### Introduction

This matter originally proceeded by way of Direct Request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (Act) and dealt with an Application for Dispute Resolution (application) by the landlord for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 2, 2021 (10 Day Notice) and to recover the filing fee. On May 14, 2021, an adjudicator adjourned the matter to a participatory hearing which was held on this date, Friday, September 3, 2021 at 11:00 a.m. Pacific Time. An Interim Decision dated May 14, 2021 was issued, which should be read in conjunction with this decision.

On this date, September 3, 2021 the landlord attended the participatory hearing and was affirmed. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated April 28, 2021 (Notice of Hearing), application and documentary evidence were considered and are also addressed in the Interim Decision which I will not repeat in this decision and of which I am satisfied that service was completed on the tenant by personal service. Regarding the Notice of Adjourned Hearing dated May 19, 2021, the landlord testified that the Notice of Adjourned Hearing, and other documentary evidence were served on the tenant by registered mail. The registered mail tracking number has been included on the style of cause for ease of reference. The landlord also stated that the tenant continues to occupy the rental unit and the address of the rental unit was where the tenant was served. According to the Canada Post registered mail tracking website, the tenant was served as of May 25, 2021. Given section 90 of the Act, I find the tenant was deemed served 5 days after May 19, 2021 which was May 26, 2021. Given the above, I find that the tenant was sufficiently served

with all documents before me, and I find this matter to be undisputed by the tenant. The hearing continued without the tenant present in accordance with Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing.

### Preliminary and Procedural Matters

The landlord was informed at the start of the hearing that recording of the dispute resolution is prohibited under RTB Rule 6.11. The landlord was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the landlord was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The landlord did not have had any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenant does not have an email address, the decision will be sent by regular mail to the tenant.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

The landlord stated that they lost their copy of the tenancy agreement. The landlord affirmed that the tenancy began in June 2016. The landlord stated that they have no record of a security deposit being paid by the tenant. The landlord affirmed that monthly rent began as \$650.00 per month and has always been due on the first day of each month.

The landlord submitted a copy of a Notice of Rent Increase document that supports that rent was increased in accordance with the Act during the tenancy. The landlord also confirmed that current monthly rent is \$772.00 per month.

The landlord testified that the 10 Day Notice was served by posting it to the tenant's door on April 2, 2021, which was witnessed by third party, OY. This is supported by the

Proof of Service document submitted in evidence. The 10 Day Notice indicates that \$823.00 was owed in rent as of April 2, 2021. The landlord stated that the tenant continues to occupy the rental unit and at the time the 10 Day Notice was issued owed \$772.00 for April 2021 rent plus \$51.00 in rent arrears for a total of \$823.00.

The landlord affirmed that on April 10, 2021, the tenant only paid \$780.00 leaving \$43.00 owing in rent arrears. The landlord stated that the tenant paid \$800.00 on May 1, 2021, leaving \$15.00 in rent arrears and then paid \$750.00 on June 12, 2021, leaving \$37.00 in rent arrears and has only paid \$772.00 in July 2021 with no rent being paid for August and September of 2021.

The landlord testified that the tenant did not dispute the 10 Day Notice or pay the full rent owing. The effective vacancy date listed on the 10 Day Notice was April 15, 2021, which has passed.

The landlord is seeking an order of possession and to recover the cost of the filing fee.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** – I accept the landlord's undisputed testimony and I find that the tenant failed to pay the full amount of \$823.00 owing as of April 2, 2021 and did not dispute the 10 Day Notice within 5 days after being deemed served with the 10 Day Notice on April 5, 2021. I find the tenant breached section 26 of the Act by failing to pay rent on the date that it is due, which is \$772.00 on the first day of each month.

The effective vacancy date of the Notice is listed as April 15, 2021, which has passed. I find the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was April 15, 2021. The tenant continues to occupy the rental unit. Therefore, I **grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

I find the tenancy ended on April 15, 2021 and that the tenant has overheld the rental unit since that date.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of \$100.00, pursuant to section 72 of the Act.

Pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of **\$100.00** for the filing fee.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenancy ended on April 15, 2021.

The landlord is granted a \$100.00 monetary order for the filing fee. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The decision and orders will be emailed to the landlord for service on the tenant. The tenant will be sent the decision by regular mail as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 3, 2021

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Residential Tenancy Branch