



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### 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;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72 of the Act.

While the landlord's agent, AD ("landlord"), attended the hearing by way of conference call, the tenants did not. I waited until 1:40 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.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 and I were the only one who had called into this teleconference.

The landlord testified that the tenant was sent a copy of the dispute resolution hearing package ("Application") and evidence by way of registered mail on May 26, 2021. The landlord provided the tracking information in their evidence. In accordance with sections 88, 89, and 90 of the Act, I find that the tenant deemed served with the Application and evidence on May 31, 2021, five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served the 10 Day Notice dated November 19, 2020 by way of registered mail on March 31, 2021. The landlord provided the proof of service in their evidentiary materials. The landlord testified that they had waited to serve the tenant with the 10 Day Notice due to the pandemic. In accordance with sections 88

and 90 of the *Act*, the 10 Day Notice I find the 10 Day Notice deemed served on the tenant on April 5, 2021, 5 days after mailing. Section 53 of the *Act* states that incorrect effective dates are automatically changed. Accordingly, the corrected, effective date of the 10 Day Notice is April 15, 2021.

Although the landlord applied for a Monetary Order of \$15,000 in their initial claim, the tenant has failed to pay rent for the months of April 2020 through to September 2021. Since the filing of the original direct request proceeding, another \$17,100.00 in rent has become owing that was not included in the original application. I have accepted the landlord's request to amend their original application from \$15,000.00 to \$32,100.00 (plus \$100.00 filing fee) to reflect the additional unpaid rent that became owing by the time this hearing was convened.

### **Issues to be Decided**

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

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

### **Background and Evidence**

This month-to-month tenancy began on August 11, 2014 with currently monthly rent set at \$950.00 payable on the first of every month. The tenant paid a security deposit in the amount of \$475.00, which the landlord still holds.

The landlord served the tenant with a 10 Day Notice for unpaid rent on March 31, 2021 as the tenant failed to pay \$14,250.00 in outstanding rent as of November 1, 2020. The landlord testified that since the 10 Day Notice was served, the tenant has failed to pay any rent although the tenant continues to reside in the home. The landlord testified that the tenant now owes the originally \$15,000.00 as claimed on the original direct request worksheet, and the full rent for the months of April 2020 through to September 2021. The total outstanding rent is \$32,100.00 as of the hearing date.

The landlord is seeking an Order of Possession as well as a Monetary Order for unpaid rent and recovery of the filing fee.

## **Analysis**

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on May 15, 2021 the corrected, effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by May 15, 2021. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenant has not moved out, I find that the landlord is entitled to a two (2) day Order of Possession, 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 the outstanding rent in the amount of \$32,100.00 for this tenancy. Therefore, I find that the landlord is entitled to s \$32,100.00 in outstanding rent for this tenancy.

The landlord continues to hold the tenant's security deposit of \$475.00. 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.

As the landlord was successful in their application, I find that the landlord is entitled to recover the filing fee for this application.

## **Conclusion**

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. 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 \$31,725.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Item	Amount
Unpaid Rent for period up to September 2021	\$32,100.00
Recovery of Filing Fee for this Application	100.00
Security Deposit	-475.00
<b>Total Monetary Order</b>	<b>\$31,725.00</b>

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 *ACT Tenancy Act*.

Dated: September 22, 2021

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Residential Tenancy Branch