



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

This hearing 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.

The tenant did not attend this hearing, which lasted approximately 21 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:21 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only people who called into this teleconference.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* does not permit recording of this hearing by anyone.

I explained the hearing process to the landlord and informed him that I could not provide legal advice to him. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests. The landlord confirmed that he was ready to proceed with this hearing.

### Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlord's paper application only, not any participation by the tenant. An "interim decision," dated May 28, 2021, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlord was required to serve the interim decision and notice of reconvened hearing, dated June 4, 2021, to the tenant. The landlord stated that he personally served the tenant with the above documents on June 6, 2021. The landlord provided a signed, witnessed proof of service letter with this application. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the interim decision and notice of reconvened hearing on June 6, 2021.

The landlord claimed that he personally served the tenant with the landlord's original application for dispute resolution by direct request on May 21, 2021. The landlord provided a signed, witnessed proof of service with this application. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord's original application on May 21, 2021.

The landlord stated that he personally served the tenant with the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 6, 2021 ("10 Day Notice") on the same date. The landlord provided a signed, witnessed proof of service with this application. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's 10 Day Notice on May 6, 2021.

### Preliminary Issue – Jurisdiction to hear Application

At the outset of this hearing, I asked the landlord to provide submissions regarding jurisdiction. The Adjudicator raised this issue in the interim decision, and stated at page 2:

*Section 4 of the Act establishes that living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation is not governed by the Act.*

*I find that tenant's address and the landlord's address on the tenancy agreement are identical. On the Application for Dispute Resolution by Direct Request, the landlord has indicated the tenant is renting a single room.*

*I also note there is no indication as to whether the tenant has access to their own bathroom or kitchen facilities or whether the landlord is the owner of the accommodation being rented out.*

*For the above reason, I find that there is a question regarding whether I have jurisdiction to decide this matter. I find that a participatory hearing is required in order to determine jurisdiction.*

The landlord confirmed that he is the owner of the rental property, which is a house. He said that the tenant rents a single room in the upper level of the house and uses his own kitchen and bathroom. The landlord stated that he lives in the basement of the same house and uses his own kitchen and bathroom. He claimed that he does not share a kitchen or bathroom with the tenant at the rental property.

Section 4(c) of the *Act*, outlines a tenancy in which the *Act* does not apply:

*4 This Act does not apply to  
(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation...*

The landlord provided undisputed evidence that he owns the rental unit and he does not share a bathroom or kitchen with the tenant during this tenancy.

The *Act* specifically excludes the owner of a rental unit who shares a bathroom and kitchen with the tenant. Accordingly, I find that I have jurisdiction to consider the landlord's application because it is not excluded by section 4(c) of the *Act*.

#### Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include September 2021 unpaid rent of \$20.00. I find that the tenant is aware that rent is due as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier, for failure to pay the full rent due.

Therefore, the tenant knew or should have known that by failing to pay his full rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that he did not attend this hearing.

#### Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

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

The landlord testified regarding the following facts. This tenancy began on November 1, 2020. Monthly rent in the amount of \$600.00 is payable on the first day of each month. A security deposit of \$300.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, which he confirmed has an effective move-out date of May 16, 2021, indicating that rent in the amount of \$600.00 was due on May 1, 2021. The landlord provided a copy of the notice.

The landlord testified regarding the following facts. Rent of \$600.00 was due for each month from May to September 2021. The tenant paid May 2021 rent of \$300.00 on May 12, 2021, \$260.00 on May 30, 2021, and \$40.00 on June 28, 2021. The tenant paid June 2021 rent of \$600.00 on June 28, 2021. The tenant paid July 2021 rent of \$600.00 on July 15, 2021. The tenant paid August 2021 rent of \$400.00 on August 3, 2021 and \$300.00 on August 11, 2021. The tenant paid September 2021 rent of \$560.00 on September 2, 2021, \$20.00 on September 7, 2021, and the tenant still has a balance of \$20.00 owing for September 2021.

The landlord confirmed that he is seeking an order of possession based on the 10 Day Notice, a monetary order of \$20.00 for unpaid rent for September 2021, and recovery of the \$100.00 application filing fee.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on May 1, 2021, within five days of receiving the 10 Day Notice on May 6, 2021. Even though the tenant made partial rent payments on May 12, 2021, May 30, 2021 and June 28, 2021, the tenant did not pay the full May 2021 rent owed within the five-day period by May 11, 2021. The tenant has not 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 failure of the tenant to take either of these actions within five days led to the end of this tenancy on May 16, 2021, the 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 16, 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*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

I find that the landlord did not waive his right to enforce the 10 Day Notice, by accepting rent from the tenant after the effective date of May 16, 2021, on the notice. I accept the landlord's testimony that he issued "use and occupancy" only receipts, stating that the tenancy is ending, to the tenant from May to September 2021, by way of letter and text messages. The landlord provided a copy of these documents with his application. I accept the landlord's testimony that he continued issuing 10 Day Notices to the tenant for the late rent from April to September 2021. The landlord provided a copy of these documents with this application. The landlord did not cancel this hearing or withdraw this application. The landlord pursued an order of possession based on the 10 Day Notice, at this hearing. I find that the landlord's express conduct indicated that he was pursuing an eviction of the tenant based on the 10 Day Notice, despite accepting rent from the tenant after the effective date of the notice.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$20.00 for September 2021. Therefore, I find that the landlord is entitled to \$20.00 in rental arrears from the tenant.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$300.00. No interest is payable on the deposit over the period of this tenancy. Although the landlord did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$120.00 from the tenant's security deposit of \$300.00, in full satisfaction of the monetary award. The remainder of the tenant's security deposit of \$180.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

### Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service of this Order** 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 order the landlord to retain \$120.00 from the tenant's security deposit of \$300.00, in full satisfaction of the monetary award. The remainder of the tenant's security deposit of \$180.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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 21, 2021

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Residential Tenancy Branch