



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNRL-S, FFL; OPR, MNRL-S, MNDCL-S, FFL; CNR

### Introduction

This hearing dealt with the landlord's first application, filed on June 22, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order of \$1,200.00 for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$600.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee for his application, pursuant to section 72.

This hearing dealt with the landlord's second application, filed on July 21, 2021, pursuant to the *Act* for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order of \$6,000.00 for unpaid rent and for compensation under the *Act, Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$600.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 9, 2021 ("10 Day Notice"), pursuant to section 46.

The tenant did not attend this hearing, which lasted approximately 18 minutes. The landlord, the landlord's English language translator, the landlord's agent SM ("landlord SM") and the landlord's agent MM ("landlord MM") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord said that he owned the rental unit and confirmed the rental unit address during this hearing. The landlord confirmed that his son had permission to assist him with English language translation at this hearing. The landlord stated that landlord SM had permission to speak on his behalf at this hearing. Landlord SM confirmed that landlord MM witnessed service of documents with him.

At the outset of this hearing, I informed all participants that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord affirmed, under oath, that he and his son would not record this hearing. Landlord SM and landlord MM both affirmed, under oath, that they would not record this hearing.

During this hearing, I explained the hearing process to all participants. They had an opportunity to ask questions. No participants made any adjournment or accommodation requests.

Landlord SM stated that he personally served the tenant with the landlord's second application for dispute resolution hearing package on August 10, 2021. Landlord MM confirmed that she witnessed this service. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord's second application on August 10, 2021.

Landlord SM stated that the tenant was served with the landlord's 10 Day Notice on July 9, 2021, by way of posting to his rental unit door. Landlord MM confirmed that she witnessed this service. Landlord SM said that the effective move-out date on the notice is July 19, 2021. In his application, the tenant indicated that he received the landlord's 10 Day Notice on July 9, 2021, by way of posting to his rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on July 12, 2021, three days after its posting.

At the outset of this hearing, the landlord confirmed that he filed his first application in error, using the wrong rental unit address. He stated that he was not pursuing his first application against the tenant. I informed the landlord that his first application was dismissed in its entirety, without leave to reapply. The landlord and landlord SM confirmed their understanding of same. The landlord stated that he was only pursuing his second application against the tenant, at this hearing.

#### Preliminary Issue – Dismissal of Tenant's Application

Landlord SM confirmed that the landlord received a copy of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the 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.*

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

#### 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 and for compensation under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for his second application?

### Background and Evidence

The landlord stated the following facts. This tenancy began on March 1, 2017. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant moved out of the rental unit on October 14, 2021, the day before this hearing on October 15, 2021. The tenant returned the keys to the landlord. The tenant left some belongings inside the rental unit. The landlord did not change the locks to the rental unit.

The landlord confirmed the following facts. He seeks an order of possession based on the 10 Day Notice. The 10 Day Notice was issued for unpaid rent of \$2,400.00 due on July 1, 2021, which includes \$1,200.00 per month for each of June and July 2021. The tenant failed to pay rent of \$1,200.00 per month from June to October 2021, inclusive, totalling \$6,000.00. The landlord seeks a monetary order of \$6,000.00 for unpaid rent and to recover the \$100.00 filing fee paid for his second application.

### Analysis

The landlord provided undisputed evidence, as the tenant did not attend this hearing. The tenant failed to pay the full rent due on July 1, 2021, within five days of being deemed to have received the 10 Day Notice. The tenant filed an application to dispute the 10 Day Notice, pursuant to section 46(4) of the *Act*. However, the tenant did not appear at this hearing in order to provide his evidence.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on July 19, 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 July 19, 2021. Although the tenant vacated the rental unit and returned the keys to the landlord, he did not remove all of his belongings and the landlord has not changed the locks. Therefore, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, in this case. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy 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 \$1,200.00 per month, totalling \$6,000.00, for five months from June to October 2021. Therefore, I find that the landlord is entitled to a monetary order of \$6,000.00 in unpaid rent from the tenant.

Although this hearing occurred on October 15, 2021, I find that the landlord is entitled to one full month's rent for October 2021 of \$1,200.00. I accept the landlord's submission that the tenant has left belongings inside the rental unit, even though he moved out on October 14, 2021. Further, rent is due on the first day of each month.

The landlord continues to hold the tenant's security deposit of \$600.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$600.00 in partial satisfaction of the monetary award.

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

### Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. The tenant must be served with this Order. 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 the tenant's entire security deposit of \$600.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$5,500.00 against the tenant. The tenant must be served with this Order. 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.

The landlord's first application is dismissed in its entirety, without leave to reapply.

The tenant's entire application is dismissed without leave to reapply.

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: October 15, 2021

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Residential Tenancy Branch