



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Brown Bros Agencies Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR

### Introduction

The landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on July 27, 2021 seeking an order of possession for the rental unit.

This participatory hearing was convened after the issuance of an August 27, 2021 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord’s application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord’s application to a participatory hearing as they were not satisfied with details in the original copy of the tenancy agreement provided by the landlord.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 15, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions. The agent of the landlord (hereinafter the “landlord”) attended the hearing; the tenant did not.

### Preliminary Matter

The landlord stated that they delivered notice of this dispute resolution to the tenant by sending it via registered mail. They provided a receipt from the post office, and an image of the front of the envelope they used, showing the tracking number. The took place on September 1, 2021, delivered by September 3.

The landlord provided one more single document to the tenant, via regular mail closer to the hearing date.

From what the landlord presents here on notifying the tenant of this hearing, I am satisfied they served the tenant notice of this hearing in a method prescribed by s. 89(2)(c) the *Act*. I consider the document received by the tenant on September 5, 2021, as per s. 90(a) of the *Act*.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 55 of the *Act*?

#### Background and Evidence

The landlord submitted a signed copy of the Residential Tenancy Agreement. This shows the start of tenancy date was November 1, 2010. The rent was \$768 per month payable as of the date of the hearing, payable on the first day of each month. The tenant paid a security deposit amount of \$345.

The landlord applied for an order of possession pursuant to the 10 Day Notice issued to the tenant on July 14, 2021. This was for the then-unpaid rent amount -- \$1,351 --- that was due on July 1, 2021. The landlord sent this to the tenant via registered mail, for which they provided a Proof of Service document showing the tracking number. The tracking history shows this was on delivered on July 15, at 5:17pm.

The landlord provided a tenant ledger, and gave affirmed testimony that the rent amount outstanding as of the date of the hearing was \$2,062. This was \$1,294 as the balance carried over from October, and the full rent for November (\$768) not paid.

The tenant did not attend the hearing and provided no documentary evidence in this matter.

### Analysis

I have reviewed the copy of the tenancy agreement. In combination with the landlord's oral testimony on its' terms and the conditions of how it was started with the tenant, I am satisfied that the agreement existed and both parties knew the terms and conditions therein. Based on the testimony of the landlord, and the proof of an agreement between the parties, I find the rent agreement was in place and clearly stated the amount and schedule for payment. The landlord affirmed that the individual who signed the agreement on behalf of the landlord at that time was the building manager.

The Act s. 46 states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Following this, s. 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

With s. 46(5), if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the undisputed submissions by the landlord, I find they provided the 10-Day Notice via registered mail. The tenant failed to pay the rent owing by July 24, within the five days after the deemed service date of July 19. There is no evidence before me that the tenant disputed the 10 Day Notice within the five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, July 30, 2021. In line with this, I grant the landlord an Order of Possession.

I find that the tenant is obligated to pay \$2,062, as per the landlord's affirmed testimony. The *Residential Tenancy Branch Rules of Procedure* provide, in Rule 4.2, for an amendment to the Application at the hearing. The landlord updating the rent ledger by way of oral testimony shows a circumstance that can reasonably be anticipated, where the rent amount owing has increased since the time of the landlord's Application. I so award \$2,062, as per s. 55(4)(b) of the *Act*.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$2,062. After setting off the security deposit, there is a balance of \$1,717. I am authorizing the landlord to keep the security deposit amount and award the balance of \$1,717 as compensation for the October and November 2021 rent amounts.

### Conclusion

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

Pursuant to sections 55 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,717. The landlord is provided with this Order in the above terms and 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 s. 9.1(1) of the *Act*.

Dated: November 15, 2021

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Residential Tenancy Branch