



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THE WESTWOOD  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### **Introduction**

On October 14, 2021, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

*The Landlord has stated that since the 10 Day Notice was issued, the Tenant has made payments totaling \$2,536.00. Although these payments are dated after the five days that are granted under the 10 Day Notice issued to the Tenant, the Landlord has not submitted copy of receipts that indicate that they accepted these payments "for use and occupancy only".*

*In the absence of receipts indicating that the partial payments were accepted "for use and occupancy only", it is not clear whether the Tenant is aware of the Landlord's intention not to reinstate the tenancy upon receiving payments from the Tenant.*

I have been delegated authority under the *Act* to consider the landlord's application for:

- A monetary order for unpaid rent by direct request, pursuant to section 67;
- An Order of Possession for unpaid Rent by direct request, pursuant to sections 46 and 55; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. 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 ones who had called into this teleconference.

The landlord attended the hearing, represented by ZM (“landlord”). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified she served the tenant with the Notice of Dispute Resolution Proceedings package by registered mail on October 15, 2021. The tracking number for the mailing is recorded on the cover page of this decision. The tenant is deemed served with the Notice of Dispute Resolution Proceedings package on October 20, 2021, five days after it was sent by registered mail pursuant to sections 89 and 90 of the *Act*. The landlord testified that she spoke to the tenant two days ago and the tenant acknowledged she was aware of the hearing that was scheduled for today.

This hearing was conducted in the absence of the tenant pursuant to rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

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

Can the landlord recover the filing fee?

#### Preliminary Issue

Since filing the Application for Dispute Resolution, the landlord testified the amount of arrears has increased. In accordance with rule 4.2 of the Residential Tenancy Branch Rules of Procedure and section 64(3) of the *Act* I find it reasonable to grant the landlord’s application to amend the Application for Dispute Resolution to include additional arrears.

#### Background and Evidence

The Landlord submitted the following relevant evidentiary material:

- a copy of a residential tenancy agreement which was signed by the Landlord and the Tenant on March 31, 2018, indicating a monthly rent of \$1,530.00, due on the first day of each month for a tenancy commencing on April 1, 2018;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated August 5, 2021, for \$2,168.00 in unpaid rent. The 10 Day Notice provides that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of August 18, 2021;

- a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the Tenant's door at 11:00am on August 5, 2021; and;
- a copy of a Direct Request Worksheet showing the rent owing and partial payments received in the amounts of \$1,268.00 on September 1, 2021 and \$1,268.00 on October 1, 2021.
- A revised Direct Request Worksheet showing the rent owing and partial payments received in the amounts of \$1,268.00 on September 1, 2020 and \$1,268.00 on October 1, 2020.

The landlord testified that it was a clerical error showing payments of \$1,268.00 were made on the first of September and October 2021. The monetary order worksheet should have reflected payments made in 2020. As the payments were made prior to the issuance of the notice to end tenancy, there was no requirement to note that rent receipts needed to reflect "for use and occupancy only".

The landlord provided undisputed testimony that rent is currently set \$1,568.00 per month, although the tenancy agreement shows monthly rent was set at \$1,530.00 and no notices of rent increases were provided. The landlord further testified that since serving the notice to end tenancy to the tenant, the tenant has not made any rent payments to the landlord. The tenant is in arrears of rent for the \$2,168.00 shown in the notice to end tenancy, plus \$1,568.00 for the months of September, October and November.

### Analysis

I am satisfied the deficiencies identified by the adjudicator in the interim decision have been addressed. The arrears in rent accrued prior to the issuance of the notice to end tenancy so the landlord was not obligated to note that rent receipts needed to reflect "for use and occupancy only".

I deem the tenant served with the 10 Day Notice on August 8, 2021, three days after it was posted to her door on August 5<sup>th</sup>, in accordance with section 88 of the *Act*. I am satisfied the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end.

Sections 46(4) and (5) of the *Act* state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
- pay the overdue rent, in which case the notice has no effect, or
  - dispute the notice by making an application for dispute resolution.
- (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 landlord's testimony and the Notice before me, I find that the tenant was served with an effective Notice and did not file an application to dispute it within the 5 days. Therefore, the tenant is conclusively presumed to have accepted the tenancy ended on August 18, 2021, the effective date of the Notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to an Order of Possession effective two (2) days after service, pursuant to section 55 of the *Act*.

The landlord has provided undisputed evidence the tenant is in arrears of rent totalling \$2,168.00. Section 26 of the *Act* is clear, 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. I find the tenant had no right to deduct any portion of her rent. Consequently, I award the landlord monetary compensation in the amount of \$2,168.00. Further, I accept the landlord's undisputed testimony that the tenant had not vacated the rental unit subsequent to the effective date stated on the notice to end tenancy. Pursuant to section 57(3) of the *Act*, I award the landlord \$1,568.00 compensation for the months of September, October or November. I award the landlord full all of September (\$1,568.00) and October (\$1,568.00) and pro-rated compensation for November [ $\$1,568.00 / 30 \times 8 \text{ (days)} = \$418.13$ ].

As the landlord's application was successful, the landlord is also entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit in the amount of \$765.00. In accordance with the offsetting provisions of section 72 of the *Act*, the landlord may retain the tenant's entire security deposit in partial satisfaction of the monetary order.

| Item  | Amount     |
|---|------------|
| Arrears as shown on the notice to end tenancy | \$2,168.00 |

|  |                   |
|--|-------------------|
| September 2021 compensation            | \$1,568.00        |
| October 2021 compensation              | \$1,568.00        |
| November 2021 compensation (pro-rated) | \$418.13          |
| Filing fee                             | \$100.00          |
| Less security deposit                  | (\$765.00)        |
| <b>Total</b>                           | <b>\$5,057.13</b> |

### Conclusion

I grant an Order of Possession to the landlord effective **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 in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$5,057.13**.

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: November 08, 2021

---

Residential Tenancy Branch