



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1253737 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), pursuant to section 38;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:25 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:20 A.M. The tenant did not attend the hearing. The landlord, represented by agent SM and owner RK, attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness SA also attended. 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, his witness and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the SM's testimony that the tenant was served with the application and evidence (the materials) by leaving a copy with an adult female at the tenant's residence on October 29, 2021. SM affirmed he observed the adult female park her

vehicle on the rental unit's driveway, the adult female confirmed she lives with the tenant and received the materials. Witness SA affirmed that she observed SM deliver the package to the adult female on October 29, 2021 at 4:20 P.M.

Residential Tenancy Branch Policy Guideline 12 states: "Where a landlord is personally serving a tenant, the landlord must leave a copy with the tenant, or by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant."

Based on the convincing testimony offered by SM and SA, I find the landlord served the materials on October 29, 2021, in accordance with section 89(2)(c) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

#### Preliminary Issue – Partial Withdrawal of the Application

At the outset of the hearing SM affirmed he is no longer seeking compensation for loss of rental income.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the landlord's application to withdraw the claim for a monetary order for loss of rental income.

#### Preliminary Issue – Amendment of the monetary claim

At the hearing SM sought to amend his application for \$7,500.00 for the unpaid rent of July, August, September and October 2021 to include an additional \$1,500.00 for the unpaid rent of November 2021.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$9,000.00.

#### Issues to be Decided

Is the landlord entitled to:

1. an order of possession?
2. a monetary order for unpaid rent?
3. an authorization to retain the deposit?
4. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

RK affirmed he purchased the rental unit in July 2020 and the tenant was already occupying the rental unit. Monthly rent is \$1,500.00, due on the first day of the month. RK collected a deposit of \$750.00 and holds it in trust.

SM affirmed he attached the Notice to the rental unit's front door on October 07, 2021 at 3:45 P.M.

A copy of the October 07, 2021 Notice was submitted into evidence. It indicates the tenant did not pay rent in the amount of "6,000.00" due on "October 07, 2021". The effective date is October 17, 2021. The tenant has not paid rent and continues to occupy the rental unit.

SM affirmed the due date of the amount owing was October 01, 2021 and the Notice indicated October 07, 2021 by mistake. SM did not serve the notice with a ledger.

The landlord is claiming unpaid rent in the total amount of \$9,000.00, as the tenant did not pay rent due on July, August, September, October and November 01, 2021.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### Order of possession

Based on the SM's convincing testimony, I find the landlord served the Notice by attaching it to the rental unit's front door on October 07, 2021, in accordance with section 88(g) of the Act. The tenant is deemed to have received the Notice on October 10, 2021, per section 90 (c) of the Act.

Section 46(2) of the Act state:

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

Section 46(2) of the Act is mandatory, and I do not have discretion as to its application.

Section 52 of the Act states:

**In order to be effective, a notice to end a tenancy must be in writing and must**

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], **state the grounds for ending the tenancy,**

(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and

(e) when given by a landlord, be in the approved form.

(emphasis added)

The Notice must contain information to clearly explain the grounds for ending the tenancy. I find that the statements "6,000.00" and "October 07, 2021" are vague, as the landlord did not indicate in the Notice or in a document attached to the Notice the months of rental arrears and the correct due date. Thus, I find the Notice does not comply with section 52(d) of the Act.

As such, I find the Notice does not comply with section 52 of the Act, it is not effective and I cannot issue an order of possession.

#### Unpaid rent

Based on the convincing testimony offered by RK, I find the tenant must pay monthly rent in the amount of \$1,500.00 on the first day of the month and the tenant did not pay July, August, September, October and November 2021 rent.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act.

Per section 26(1) of the Act, I award the landlord \$7,500.00 for July, August, September, October and November 2021 rent.

Filing fee and summary

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

In summary, the landlord is entitled to \$7,600.00.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the \$750.00 deposit in partial satisfaction of the monetary award.

Conclusion

The Notice dated October 07, 2021 is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

Pursuant to sections 26, and 72(2)(b) of the Act, I authorize the landlord to retain the \$750.00 deposit and grant the landlord a monetary order in the amount of \$6,850.00.

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 29, 2021

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Residential Tenancy Branch