



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL, CNR, LRE, LAT

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The landlord's agent, H.L. and the named tenant attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 12, 2021 and October 13, 2021.

The tenant stated that she served the landlord with the notice of hearing package via email. The landlord disputed that no such package was received. The tenant also stated that the landlord was served with the submitted documentary evidence via email on August 24, 2021. The landlord disputed that no such package was received. The tenant confirmed that no prior consent to serve the landlord with the notice of hearing package or the evidence was obtained nor did she obtain an order authorizing substitute service via email. The tenant referenced a submitted copy of an email dated September 14, 2021 as proof of service of her documentary evidence to the landlord. A review of the email references the tenant's notice of hearing package only. None of the attachments labelled provide any reference for any of the tenant's evidence.

I accept the affirmed evidence of both parties and find based upon the undisputed evidence of both parties that the landlord properly served the tenant with the notice of hearing package and the landlord's documentary evidence as per sections 88 and 89 of the Act. On the tenant's notice of hearing package and submitted documentary evidence, I find on a balance of probabilities that the tenant failed to properly serve the landlord under sections 88 and 89 of the Act. The tenant was unable to provide sufficient evidence to satisfy me that both packages were properly served and the landlord argued that no package was received from the tenant. On this basis, the tenant's application was dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

At the outset, the tenant's application was clarified. The tenant requested an order cancelling the 10 Day Notice for Unpaid Rent; an order authorizing the tenant to change the locks; and an order suspending or setting conditions on the landlord's right to enter the rental unit. The tenant claims that the landlord or the landlord's agent enters the rental unit without notice. The tenant stated that these issues were subsequent to the landlord serving the tenant with a 10 Day Notice. The tenant could not provide any supporting evidence details of how these request were related to the 10 Day Notice. As the tenant's application was dismissed with leave to reapply, I decline to make any order of the merits of these claims.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed the landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated August 21, 2021 by posting it to the rental unit door on August 21, 2021. The 10 Day Notice sets out an effective end of tenancy date of September 6, 2021 and that the tenant failed to pay rent of \$11,600.00 that was due on August 1, 2021.

The landlord seeks an order of possession and a monetary claim for unpaid rent. The landlord clarified that since the application was filed the tenant continues to occupy the rental unit and as of the date of this hearing owes rental arrears totalling \$17,400.00.

The tenant confirmed that no rent has been paid as claimed by the landlord based upon the 10 Day Notice dated August 21, 2021. The tenant stated that due to personal and health issues she has not been able to pay any of the rent. The tenant confirmed that since the 10 Day Notice was served no rent has been paid to the landlord.

### Analysis

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

I accept the undisputed affirmed evidence of both parties and find that the landlord did properly serve the tenant with the 10 Day Notice dated August 21, 2021 by posting it to the rental unit door.

Both parties confirmed in their direct testimony that the tenant failed to pay rent of \$11,600.00 that was due on August 1, 2021 as per the 10 Day Notice dated August 21, 2021. Both parties also confirmed the tenant still occupies the rental unit and continues to not pay any rent as of the date of this hearing. As such, I accept the conclusive evidence of both parties and find that the landlord has established a claim for unpaid rent of \$17,400.00. As such, the landlord is granted an order of possession to be effective 2 days after it is served upon the tenant as the effective end of tenancy date of the notice has now passed.

The landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession for unpaid rent.

The landlord is granted a monetary order for \$17,500.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those Courts.

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 01, 2021

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Residential Tenancy Branch