



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: CNR, OLC, LRE, LAT, FF

For the landlords: OPR-DR, MNR-DR, MND-S, MNDC, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlords;
- an order requiring the landlords to comply with the Act, regulations, or tenancy agreement;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- authorization to change the locks to the rental unit; and
- to recover the cost of the filing fee.

The landlord applied for:

- an order of possession of the rental unit pursuant to the Notice served to the tenant;
- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenant's security deposit and pet damage deposit to use against a monetary award;
- compensation for a monetary loss or other money owed; and
- to recover the cost of the filing fee.

The landlord's claim was by way of an original application and an amended application.

The landlords and legal counsel (counsel) attended the hearing; the tenant did not attend.

The landlord testified that they served the tenant their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by personal service on July 28, 2021.

Based upon the landlord's undisputed oral and written submissions, I accept the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

All parties confirmed by affirmed testimony they were not recording the hearing.

Thereafter the landlords and counsel were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Preliminary and Procedural Matters

Despite having his own hearing scheduled for 9:30 a.m. on November 18, 2021, and the landlord's application and notice of hearing for the same time and date, the tenant failed to attend the hearing. The hearing continued for 48 minutes.

Rules 7.3 and 7.4 of the 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.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of any evidence or submissions from the tenant at the hearing, I order the tenant's application dismissed, without leave to reapply.**

Additionally, the landlords were advised that due to the tenant or guests continuing to occupy the rental unit that their claim for damages is premature. As a result, their claim for damages and other monetary compensation is **dismissed, with leave to reapply.**

#### Issue(s) to be Decided

Are the landlords entitled to an order of possession of the rental unit due to unpaid rent, a monetary order for unpaid rent, and recovery of the filing fee paid for this application?

#### Background and Evidence

The tenancy began on April 15, 2016, monthly rent is \$1,950, due the first day of the month, and the tenant paid a security deposit of \$975.

The landlords submitted evidence that on July 15, 2021, they served the tenant with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$1,950 owed as of July 12, 2021. The effective vacancy date listed on the Notice was July 25, 2021. Filed in evidence was a copy of the Notice.

The tenant did file his application to dispute the Notice within the 5 days allowed, as his application was made on July 16, 2021.

The landlords submitted that since the Notice was issued to the tenant, the tenant has not made any further rent payments and owes for the months July, August, September, October, and November 2021, for a total of \$9750.

The landlord asserted that they believed the tenant vacated the rental unit in April 2021, but that he has had occupants living in the rental unit since that time. The landlord also

asserted that they attended the rental unit in October 2021, for an inspection, which revealed that the tenant caused damage and left personal property all over the rental unit. In addition, the landlord said that the tenant's vehicle is still occupying the designated parking space. For these reasons, the landlord is seeking an order of possession of the rental unit and a monetary order to include unpaid monthly rent through the date of the hearing.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, which the landlord did in the case here.

The Notice informed the tenant that he had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise, the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

As the Notice was attached to the tenant's door, he was deemed to have received the Notice three days later, or in this case, July 18, 2021. Therefore, the corrected effective date of the Notice is July 28, 2021.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenant was served a 10 Day Notice, that the tenant owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenant filed an application for dispute resolution in dispute of the Notice, he did not attend the hearing to offer rebuttal evidence to prove the rent was paid.

As a result of the above, I order that the tenancy ended on July 28, 2021.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlord is entitled to and I **grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant.**

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, such as **bailiff costs and filing fees**, are recoverable from the tenant.

I also find that the landlord submitted sufficient evidence to show that the tenant owed, but did not pay, the rent of \$1,950 for the month of July 2021. The evidence showed the tenant overheld in the rental unit beyond the end of tenancy date of July 28, 2021, and I find the tenant now owes the landlord loss of rent revenue for August, September, October, and November 2021, of \$1,950 each month.

As a result, I find the landlord has established a monetary claim of \$9,750.

I also grant the landlord recovery of their filing fee of \$100.

I therefore find the landlord is entitled to a monetary award of **\$9,850**, comprised of unpaid rent of \$1,950, for July 2021, loss of rent revenue of \$7,800 for August, September, October and November 2021, or \$1,950 each month, and the \$100 filing fee paid by the landlord for this application.

At the landlord's request, I authorize and direct the landlord to retain the tenant's security deposit of **\$975** in partial satisfaction of their monetary award of \$9,850.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of **\$8,875**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant's application is dismissed without leave to reapply as he failed to attend the hearing to present evidence.

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent, as described above, and the filing fee has been granted.

The balance of the landlord's application for monetary compensation for damages and other matters is dismissed, with leave to reapply.

The landlords were informed that costs to travel back and forth between their home and the rental unit is a cost not recoverable under the Act, as this is a landlord's cost of doing business.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 18, 2021

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Residential Tenancy Branch