



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, OPR, MNR

### Introduction

The Landlord applies for an order of possession pursuant to s. 55 of the *Residential Tenancy Act* (the “*Act*”) after issuing a 10-Day Notice to End Tenancy signed June 23, 2021 (the “10-Day Notice”). The Landlord also seeks an order for unpaid rent pursuant to s. 67 and for return of her filing fee pursuant to s 72.

L.Y. appeared as the Landlord. S.I. appeared as counsel for the Landlord. K.S. appeared on his behalf as Tenant. A.R. appeared as translator and assistant for the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

A.R., who appeared as translator for K.S., certified that he had knowledge of the Dari language and was able to translate English to Dari, and vice versa, on behalf of the Tenant.

The Landlord indicated having served the 10-Day Notice on the Tenant by way of registered mail sent on June 23, 2021. The Landlord provided a tracking receipt dated June 23, 2021 as evidence. I find that the Landlord has served the 10-Day Notice in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Tenant to have been served with the 10-Day Notice on June 28, 2021.

The Landlord served the Notice of Dispute Resolution for the participatory hearing and her evidence by way of registered mail sent on August 12, 2021. I find that the Landlord's application package was served in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem the Tenant to have been served with the application package on August 17, 2021

#### Preliminary Issue – Service via registered mail

The Tenant indicates having received the Notice of Dispute Resolution and the 10-Day Notice three-days before the hearing. Policy Guideline #12 states the following with respect to service via registered mail:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Landlord is entitled to serve the 10-Day Notice and the Notice of Dispute Resolution by way of registered mail in accordance with ss. 88 and 89 of the *Act*. Policy Guideline #12 is clear that failing to pick up registered mail sent to the correct address does not impact the deeming provisions under s. 90 of the *Act*. Accordingly, I place no weight in the Tenant's submissions that he received the 10-Day Notice and the Notice of Dispute Resolution three days before the hearing. The Tenant's statements do not override the deeming provisions of the *Act*.

#### Issue(s) to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to a monetary order for unpaid rent and, if so, in what amount?
- 3) Is the Landlord entitled to return of their filing fee?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties indicate that the tenancy began on July 1, 2018. The Tenant occupies the basement unit of a residential property. Rent is \$600.00, payable on the 1<sup>st</sup> day of each month. The Landlord confirmed holding a security deposit of \$600.00 in trust for the Tenant. A written tenancy agreement was submitted into evidence confirming these details.

The Landlord indicates that the Tenant has not paid rent since March 2020. The Landlord further indicated having issue the 10-Day Notice on June 23, 2021 after returning to Canada after being absent from the country until June 2021.

The Landlord seeks rent of \$600.00 for each month from April 2020 until November 2021, a period comprising of 20 months. The total amount claimed for unpaid rent by the Landlord is \$12,000.00.

The Tenant does not deny failing to pay rent over that period. The Tenant indicates having offered to pay partial rent to the Landlord, but the Landlord refused to accept the partial rent payment from the Landlord. The Landlord that the Tenant had indicated he'd sent \$300.00 in around February 2021, but that she never received it.

The Tenant indicated that he lost his job as a result of the COVID-19 pandemic and has since been in an accident that prevents him from returning to work. The parties confirmed there was no repayment plan with respect to rent covered by the affected period in which rent was not payable in the spring of 2020.

The Landlord confirmed not having received an application from the Tenant disputing the 10-Day Notice. The Tenant confirmed not having filed to dispute the 10-Day Notice on the basis that he had not received it until 3 days before this hearing.

The Tenant continues to reside within the rental unit.

### Analysis

The Landlord seeks an order of possession and an order for unpaid rent.

Pursuant to s. 46 of the *Act*, a landlord may end a tenancy with 10 days notice when the tenant has not paid rent. Section 26(1) of the *Act* emphasizes a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with

the *Act*, the regulations, or the tenancy agreement unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The Tenant does not argue they were justified by the *Act* to withhold rent. The circumstances of the Tenant, though tragic, do not justify his failure to pay rent.

When a 10-day Notice to End Tenancy is issued under s. 46 of the *Act* is received by a tenant, a tenant must, within 5-days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. In this case, the Tenant did neither. Given this, s. 46(5) comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date is July 8, 2021, as stated in the 10-Day Notice.

As the 10-Day Notice is valid, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy as per s. 46(5) of the *Act*. Accordingly, the Tenant has been overholding the rental unit since July 8, 2021. The Landlord shall have an order of possession.

This application was originally filed as a direct request but was adjourned to a participatory hearing on the basis that the rental unit, as stated within the tenancy agreement, did not correspond with the rental unit as stated within the 10-Day Notice. I accept the parties undisputed evidence that the rental unit is, in fact, a basement unit as stated within the 10-Day Notice. I find that the rental unit address is properly set out in the 10-Day Notice.

I note that the 10-Day Notice was issued on the basis that the Tenant failed to pay rent of \$9,600.00 on July 1, 2021. The 10-Day Notice was issued on June 23, 2021. Though I do not encourage the improper dating and demand as set out in the 10-Day Notice, I accept that the Tenant was in arrears of rent when the 10-Day Notice was issued. Pursuant to s. 68 of the *Act*, I amend the 10-Day Notice to reflect that the Tenant owed \$9,000 as of June 1, 2021. I do so on the basis that the Tenant knew or should have known that when the 10-Day Notice was issued he was in significant arrears in rent. I find it reasonable to do so on the basis that I do not believe this technical defect should delay the resolution of this matter. After the amendment, I find that the 10-Day Notice complies with the formal requirements of s. 52.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or

the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

I find that the Tenant has failed to pay rent pursuant to the tenancy agreement and had no lawful reason to withhold the rent. The breach of the tenancy agreement and s. 26 of the *Act* gives rise to the Landlord's claim for unpaid rent.

I accept the undisputed evidence that the Landlord has not received rent from the Tenant since March 2020 and that the Landlord is entitled to rent from that point. The Landlord has been unable to mitigate their losses as the Tenant continues to reside within the rental unit and cannot re-rent the unit.

I find that the Tenant has failed to pay rent of \$600.00 for 20 months, comprising a total amount of unpaid rent of \$12,000.00. The Landlord shall have an order for unpaid rent.

As the Landlord was successful in their application, I grant their order for return of their filing fee. The Tenant shall pay \$100.00 to the Landlord for the filing fee.

I exercise my discretion under s. 72(2) and order that the Landlord may retain the security deposit of \$600.00 she currently holds in trust in partial satisfaction of the debt owed by the Tenant.

### Conclusion

Pursuant to s. 55 of the *Act*, I grant the Landlord an order of possession. The Tenant shall provide vacant possession of the rental unit no later than **two (2) days** after having been served with the order of possession.

I grant the Landlord a monetary order taking into account the following:

Item	Amount
Unpaid Rent	\$12,000.00
Landlord's filing fee pursuant to s. 72(1)	\$100.00
Less security deposit to be retained by the Landlord pursuant to s. 72(2)	-\$600.00
<b>TOTAL</b>	<b>\$11,500.00</b>

Pursuant to s. 67 of the *Act*, the Tenant shall pay **\$11,500.00** to the Landlord.

If the Tenant does not comply with the monetary portion of this order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

It is the Landlord's obligation to serve these orders on the Tenant.

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