



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding METCAP LIVING MANAGEMENT  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNRL-S FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 7, 2021 (10 Day Notice), for a monetary order for unpaid rent of \$3,580.00, to retain the security deposit towards any amount owing, and to recover the cost of the filing fee.

An agent for the landlord, LM (agent) attended the participatory hearing and was affirmed. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated October 19, 2021 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail and that the tenant continues to occupy the rental unit as of the date of the hearing. The registered mail tracking number was submitted in evidence and has been included on the style of cause for ease of reference. According to the online Canada Post registered mail tracking website, the package was mailed to the tenant on October 29, 2021 and was signed for and accepted by the tenant on November 15, 2021. Based on the evidence before me, I find the tenant was sufficiently served on November 15, 2021.

Given the above, the hearing continued without the tenant present in accordance with Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing.

### Preliminary and Procedural Matters

The agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The agent was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The agent did not have had any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The agent also confirmed an email address for the tenant and was advised that the decision will be sent by email to the tenant.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 1, 2020 and reverted to a month-to-month tenancy after August 31, 2021. Monthly rent in the amount \$1,740.00 is due on first day of each month. The tenant paid a security deposit of \$870.00, which the landlord continues to hold. The agent confirmed that the tenant continues to occupy the rental unit.

The agent testified that the 10 Day Notice was served by mail on the tenant at the rental unit on September 7, 2021. The 10 Day Notice indicates that \$1,740.00 was owed in rent as of September 1, 2021. The landlord stated that the tenant continues to occupy the rental unit and owes a total of \$3,470.00 as of the date of the hearing. The agent testified that the tenant did not dispute the 10 Day Notice or pay the rent owing. The effective vacancy date listed on the 10 Day Notice was September 22, 2021, which has passed.

The landlord is seeking an order of possession, a monetary order for unpaid rent, and to recover the cost of the filing fee.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** – I accept the agent's undisputed testimony and I find that the tenant failed to pay any of the amount claimed by the landlord as owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. Pursuant to section 90 of the Act, I find the tenant was deemed served with the 10 Day Notice 5 days after it was mailed, which would be September 12, 2021. The effective vacancy date of the Notice is listed as September 22, 2021, which has passed. I find the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was September 12, 2021. The tenant continues to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

I find the tenancy ended on September 22, 2021 and that the tenant has overheld the rental unit since that date.

**Claim for unpaid rent and loss of rent** – Firstly, as the tenant was served and did not attend the hearing, I find the application of the landlord to be unopposed by the tenant. I accept the undisputed testimony of the agent that the tenant owes rent as claimed in the amount of \$3,470.00 and as noted above.

Pursuant to section 26 of the Act, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has breached section 26 of the Act by failing to comply with a standard term of the tenancy agreement, which stipulates that rent is due monthly on the first day of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$3,470.00** as indicated above.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the Act.

**I authorize** the landlord to retain the tenant's full security deposit of \$870.00, which has accrued \$0.00 in interest under the Act in partial satisfaction of the landlord's monetary

claim. I grant the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$2,700.00**.

**I caution** the tenant not to breach section 26 of the Act in the future.

### Conclusion

The landlord's application is fully successful. The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenancy ended on September 22, 2021.

The landlord has established a total monetary claim of \$3,570.00 and has been granted authorization to retain the tenant's full security deposit of \$870.00 to offset the money owed. The landlord has been granted a monetary order for the balance owing by the tenant to the landlord in the amount of \$2,700.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. I caution the tenant that they can be held liable for all costs related to the enforcement of both orders. The decision and orders will be emailed to the landlord for service on the tenant. The tenant will be sent the decision only via email. The tenant has been cautioned as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 6, 2021

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Residential Tenancy Branch