



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BELMONT PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR OPC MNDL MNRL 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 October 12, 2021 (10 Day Notice), for an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated for August 24, 2021 (1 Month Notice), for a monetary order for unpaid rent and damages in the amount of \$6,063.01 and to recover the cost of the filing fee.

An agent for the corporate landlord, BM (agent) attended the participatory hearing and was affirmed. The agent confirmed the actual name of the landlord was company BP and pursuant to section 64(3)(c) of the Act the landlord was amended during the hearing. 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 September 23, 2021 (Notice of Hearing 1), application and documentary evidence were considered. The landlord testified that the Notice of Hearing 1, application and documentary evidence (Package 1) were served on the tenant by registered mail at the rental unit address and that the tenant continues to occupy the rental unit. A registered mail tracking number was provided and has been included on the style of cause and labelled as 1. According the Canada Post registered mail tracking website, Package 1 was mailed on September 26, 2021 and was successfully signed for and delivered on October 4, 2021.

The landlord also testified that the amendment relating to the 10 Day Notice resulted in Notice of Hearing 2 and additional evidence (Package 2) and was mailed to the tenant also by registered mail. A second registered mail tracking number was submitted in evidence and labelled as 2. According the Canada Post registered mail tracking website, Package 2 was mailed on January 5, 2022 and was successfully signed for and delivered on January 26, 2022. Based on the above and without any evidence before me to prove to the contrary, I accept that the tenant was served with both Package 1 and Package 2 as indicated above. Given the above, I find this matter to be undisputed by the tenant.

### Preliminary and Procedural Matters

The agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 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.

The landlord was advised that as the tenant continues to occupy the rental unit, that the landlord's claim for damages is premature. As a result, I dismiss the landlord's application for damages to the rental unit, **with leave to reapply**.

Furthermore, the landlord 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. As the tenant does not have an email address, the decision will be sent by regular mail to the tenant at the rental unit address.

In addition to the above, the agent made a verbal request that the tenant's security deposit of \$675.00 and pet damage deposit of \$675.00. be offset from any amount owing by 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?

- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?
- What should happen to the tenant's security deposit and pet damage deposit?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2021 and is scheduled to revert to a month-to-month tenancy after April 30, 2022. Monthly rent in the amount \$1,350.00 is due on the first day of each month.

The agent testified that the 10 Day Notice was served on the tenant by posting the rental unit door on October 12, 2021. The 10 Day Notice indicates that \$1,370.00 was owed in rent as of January 13, 2021 and that the 10 Day Notice should have read \$1,350.00 as that was the monthly rent and not \$1,370.00. The landlord stated that the tenant continues to occupy the rental unit and owes the following amount in rent arrears:

1. \$1,350.00 owing for October 2021 (\$0.00 paid by tenant)
2. \$1,350.00 owing for November 2021 (\$0.00 paid by tenant)
3. \$1,350.00 owing for December 2021 (\$0.00 paid by tenant)
4. \$1,350.00 owing for January 2022 (\$0.00 paid by tenant)

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### **\$5,400.00 OWING IN UNPAID RENT**

The agent testified that the tenant did not dispute the 10 Day Notice or pay the rent owing. The agent stated that the tenant has also placed "stop payments" on the cheques for December 2021 and January 2022 and that the cheques for October 2021 and November 2021 were returned from the bank as NSF (non-sufficient funds).

The effective vacancy date listed on the 10 Day Notice was October 25, 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. The agent stated that the landlord would like to offset the money owing with the security deposit and pet damage deposit (combined deposits).

### 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.

Pursuant to section 68(1) of the Act, I amend the 10 Day Notice to reflect the correct rent amount of \$1,350.00, which I find is clearly set out on the written tenancy agreement before me.

**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, which I find was deemed served on October 15, 2021. This is determined pursuant to section 90 of the Act, which states that documents posted to the door are deemed served 3 days after they are posted. The effective vacancy date of the 10 Day Notice is listed as October 25, 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 October 25, 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 **October 25, 2021** and that the tenant has overheld the rental unit since that date.

I find that I do not need to consider the 1 Month Notice as the tenancy ended by way of the undisputed 10 Day Notice.

**Claim for unpaid rent/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 **\$5,400.00** 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.

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 find the landlord has met the burden of proof and has established a total monetary claim of **\$5,500.00** as indicated above.

This claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenant's security deposit and pet damage deposit (combined deposits) which the landlords continue to hold in the amount of \$1,350.00 which have accrued \$0.00 in interest to date. **I authorize** the landlord to retain the tenant's full security deposit of \$675.00 and pet damage deposit of \$675.00 in partial satisfaction of the landlord's monetary claim. Further, I grant the landlord a monetary order pursuant to section 67 of the Act for the balance owing to the landlord by the tenant in the amount of **\$4,150.00**.

### Conclusion

The landlord's application is most successful, except for the portion related to damages which has been dismissed with leave to reapply.

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 October 25, 2021.

The landlord has established a total monetary claim of \$5,500.00 and has been authorized to retain the tenant's combined deposits of \$1,350.00 and is granted a monetary order for the balance owing to the landlord in the amount of \$4,150.00. 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.

The tenant is cautioned that they may be held liable for all costs associated with enforcing the order of possession and the monetary order.

The decision and orders will be emailed to the landlord for service on the tenant.

The tenant will be sent the decision by regular mail as indicated 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: January 27, 2022

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Residential Tenancy Branch