



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pace Realty Corp.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served a 10 Day Notice dated August 11, 2021; and with a request for a monetary order of \$16,745.00 for outstanding unpaid rent from the Tenant; and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, M.D. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony; however, no one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about it. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that the Tenant was served with the Notice of Hearing documents and the Landlord's evidentiary submissions by posting them on the rental unit door, on December 4, 2021. The Agent said that a witness was present when these documents

were served. Based on the evidence before me, I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act on December 7, 2021, three days after they were posted to the rental unit door. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

### Preliminary and Procedural Matters

The Landlord provided their email address in the Application, and the Agent confirmed this address in the hearing. However, she said she did not have an email address for the Tenant; therefore, the Decision will be mailed to the Tenant at the rental unit address and emailed to the Landlord at their email address.

At the outset of the hearing, I advised the Agent that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Agent affirmed that she was not recording the hearing.

### Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

### Background and Evidence

The tenancy agreement states, and the Agent confirmed in the hearing that the periodic tenancy began on May 1, 2017, with a monthly rent of \$880.00, due on the first day of each month. The Agent confirmed that the Tenant did not pay the Landlord a security deposit, nor a pet damage deposit.

The Agent said that the Tenant was served with a 10 Day Notice that was signed and dated August 11, 2021, it has the rental unit address, and it was served by being posted on the rental unit door on August 11, 2021, at 12:30 p.m. The 10 Day Notice has an effective vacancy date of August 21, 2021, which is automatically corrected by the Act to August 24, 2021. The 10 Day Notice was served on the grounds that the Tenant failed to pay \$16,745.00 in rent that was owing on August 1, 2021.

The Agent explained that the Tenant has continued to fail to pay her monthly rent; although, the Agent said that the Tenant has made some payments since the eviction

notice was issued. The following table sets out the amount owing, and the amount paid by the Tenant to date:

<b>Date Rent Due</b>	<b>Amount Owing</b>	<b>Amount Received</b>	<b>Date Received</b>	<b>Amount Owing</b>
Aug. 1/21	\$16,745.00	\$0.00		\$16,745.00
Sep. 1/21	\$17,625.00	\$0.00		\$17,625.00
Oct. 1/21	\$18,505.00	\$0.00		\$18,505.00
Nov. 1/21	\$19,385.00	\$500.00 \$2,000.00	Nov. 18/21 Nov. 19/21	\$16,885.00
Dec. 1/21	\$16,885.00 + 880.00	\$2,000.00 \$2,000.00	Dec. 30/21 Dec. 31/21	\$13,765.00
Jan 1/22	\$13,765.00 + 880.00	\$300.00	Jan. 10/22	\$14,343.00
			<b>TOTAL</b>	<b>\$14,343.00</b>

### Analysis

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

Section 26 of the Act states: “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 this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Further, section 46 of the Act permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due, by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receipt of a notice to end tenancy for unpaid rent to pay the overdue rent or to dispute the notice by applying for dispute resolution. Failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, I find the Tenant received the 10 Day Notice on August 14, 2021, three days after it was posted to the door. Accordingly, pursuant to section 46 of the Act, the Tenant had until August 24, 2021, to dispute the 10 Day Notice by applying for dispute resolution or to pay the rent owing in full. Although the Tenant has made partial payments since the 10 Day Notice was served, I find that overdue rent has not been paid and that rent in the amount of \$14,345.00 remains outstanding as of the date of the hearing. Accordingly, I find the Landlord has demonstrated an entitlement to a monetary award of \$14,345.00 for unpaid rent. I, therefore, award the Landlord **\$14,345.00** from the Tenant, pursuant to sections 26, 46 and 67 of the Act.

As rent has not been paid when due, I find further that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act; I grant the Landlord an **Order of Possession**, which will be **effective two days after service** on the Tenant.

Having been successful in their Application, I award the Landlord with recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act.

I, therefore, grant the Landlord a **Monetary Order** of **\$14,445.00** from the Tenant, pursuant to section 67 of the Act.

### Conclusion

The Landlord is successful in their Application. They provided sufficient, undisputed evidence to establish the validity of the 10 Day Notice and their entitlement to an order of possession and a monetary order for unpaid rent outstanding. The Tenant did not dispute the 10 Day Notice or pay her rent in full when required; therefore, I find that pursuant to section 46 (5), the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the Act, I grant the Landlord a **Monetary Order** of **\$14,445.00** from the Tenant. The Landlord is provided with this Order in the above terms and the

Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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