



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held, by teleconference, on January 4, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and provided affirmed testimony. The Tenant did not attend the hearing.

The Landlord testified that he sent the Application Package and Notice of Hearing along with supporting documentary evidence, to the Tenant, by registered mail on November 24, 2021. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed served with this package 5 days after it was sent.

The Landlord stated that at this point he does not wish to pursue his monetary claim against the Tenant, and he only needs an order of possession. The Landlord requested to withdraw his application for monetary compensation. As such, I amend the Landlord's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?

### Background and Evidence

The Landlord testified that current rent is \$2,700.00 per month and is due on the first day of each month. The Landlord holds a security deposit in the amount of \$1,350.00.

The Landlord testified that the Tenant owed \$2,650.00 in unpaid rent at the time he issued the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The Landlord testified that he served the 10 Day Notice by giving it to the Tenant, in person, on September 18, 2021. Service of this document was witnessed by a third party. The Landlord testified that the Tenant failed to make any payments towards rent following this 10 Day Notice. The Landlord stated that since the Notice was issued, the Tenant has only made very small and partial payments towards his rent, and currently owes several thousands of dollars. The Landlord did not have the detailed breakdown of the payments made over the past few months, but was clear that the Tenant failed to pay his rent, in full, within 5 days of receiving the Notice.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

I find that the Tenant owed \$2,650.00, at the time the 10 Day Notice was issued, on September 18, 2021. The Landlord personally delivered this document to the Tenant. I

find the Tenant received the 10 Day Notice the same day it was given to him in person on September 18, 2021.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence the Tenant did either. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the Tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution. I allow the Landlord to retain \$100.00 from the Tenant's security deposit to offset this fee.

### Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: January 04, 2022

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Residential Tenancy Branch