



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

The Landlord applies for the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy dated August 10, 2021 (the “10-Day Notice”);
- An order for unpaid rent pursuant to s. 67; and
- Return of their filing fee pursuant to s. 72.

The Landlord’s application was originally filed as a direct request but was adjourned to a participatory hearing after interim reasons were issued on October 14, 2021.

J.L. appeared as agent for the Landlord. R.J. appeared as Tenant. The Tenant attended the hearing sometime after the hearing had commenced.

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.

The Landlord’s agent advises that the Notice of Dispute Resolution and the evidence for the participatory hearing was served on the Tenant by posting it to his door on October 18, 2021. The Tenant denies receiving the Landlord’s application materials and advised that he learnt of the hearing from word around the building.

The Landlord provides a proof of service form confirming service on October 18, 2021 at 1:36 PM, which was served by M.L. and witnessed by G.C. The Landlord’s agent further advised that the application materials for the direct request application was sent via registered mail on September 17, 2022. The Landlord provided a tracking number

for the registered mail of September 17, 2022. I note the interim decision deemed the Tenant served with the direct request application materials. Indeed, review of the tracking number shows that the package for the direct request application was picked up on October 6, 2021.

I accept that the Landlord served the Notice of Dispute Resolution and their evidence for the participatory hearing by posting it to the Tenant's door on October 18, 2021. Pursuant to s. 89(2), a landlord is entitled to serve documents for hearings dealing with an order for possession by posting them to a tenant's door. I find that the Landlord did so in this case on October 18, 2021.

The Tenant provides a bare denial of service. The Tenant denies knowing of these proceedings at all except for hearing of it from third-party occupants at the building. I do not believe the Tenant under these circumstances. The Landlord provides proof of serving the application materials for the direct request application by way of registered mail, which was received on October 6, 2021. The Landlord provides a proof of service form showing service for this participatory hearing by posting to the Tenant's door on October 18, 2021 as mentioned above.

The deeming provisions under s. 90 of the *Act* may only be rebutted where fairness requires. As explained in Policy Guideline 12, this only occurs in instances where circumstances where clear evidence shows that a document was not received, such as Canada Post strike or the party being away when it was sent to their mailing address. The Tenant has provided no evidence of this other than a bare denial of service. Accordingly, pursuant to s. 90 of the *Act*, I deem that the Tenant received the Notice of Dispute Resolution and evidence for the participatory hearing on October 21, 2021.

#### Preliminary Issue – Service of the 10-Day Notice

The Landlord's agent advises that the 10-Day Notice was served on the Tenant by posting it to their door on August 10, 2021. The Tenant denies receiving the 10-Day Notice at all.

The Landlord provides a proof of service form showing the 10-Day Notice was posted to the Tenant's door on August 10, 2021, was served by M.L. and J.L. witnessed service.

I do not accept the Tenant's bare denial that he did not receive the 10-Day Notice at all. As mentioned above, he was served with 10-Day Notice in the application materials, the

first by way of registered mail sent on September 17 and the second by having it posted to his door on October 18.

I accept the Landlord's proof of service form showing that the 10-Day Notice was served on the Tenant by posting it to the his door on August 10, 2021. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*. The Tenant provides no evidence to rebut the deeming provisions of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on August 13, 2021.

#### Preliminary Issue – Adjournment Request

The Tenant requested an adjournment on the basis that he did not receive any of the relevant materials for the application. The Landlord resisted the adjournment on the basis that the matter has been lingering for quite some time and that the Tenant has failed to pay rent at all for many months.

I declined to grant the Tenant his requested adjournment as this matter had been ongoing for quite some time. The 10-Day Notice was signed on August 10, 2021. There would be significant prejudice to the parties to have this matter adjourned additional months, particularly the Landlord who claims to have not received any rent at all since June 2021.

#### Issue(s) to be Decided

- 1) Is the Landlord entitled to an order for possession?
- 2) Is the Landlord entitled to an order for unpaid rent? If so, in what amount?
- 3) Is the Landlord entitled to the 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 confirmed that the tenancy began in February 2020, that rent of \$1,080.00 is due on the first day of each month, and that the Landlord holds a security deposit of \$540.00 in trust for the Tenant. The Landlord provides a copy of the written tenancy agreement in their evidence.

The Landlord's agent advises that 10-Day Notice was issued after ongoing issues with Tenant's payment of rent.

The Landlord provides a copy of the Tenant's rent ledger showing that as at August 1, 2021, the Tenant owed \$4,057.00. The ledger shows the Tenant's payment history from September 1, 2020 to August 1, 2021. As at September 1, 2020, the Tenant is shown to have owed \$1,517.00. No documentary evidence was provided showing how this amount was arrived at.

The rent ledger that was provided shows the following payment history:

Month	Rent Owed	Rent Paid	Balance
September 2020	\$1,080.00	\$1,200.00	\$120.00
October 2020	\$1,080.00	\$1,180.00	\$100.00
November 2020	\$1,080.00	\$0.00	-\$1,080.00
December 2020	\$1,080.00	\$1500.00	\$1,070.00
		\$650.00	
January 2021	\$1,080.00	\$500.00	-\$580.00
February 2021	\$1,080.00	\$1,080.00	\$0.00
March 2021	\$1,080.00	\$1,080.00	\$0.00
April 2021	\$1,080.00	\$0.00	-\$1,080.00
May 2021	\$1,080.00	\$1,080.00	\$950.00
		\$950.00	
June 2021	\$1,080.00	\$1,200.00	\$120.00
July 2021	\$1,080.00	\$0.00	-\$1,080.00
August 2021	\$1,080.00	\$0.00	-\$1,080.00
<b>Total</b>			<b>-\$2,540.00</b>

The Landlord explained that the \$1,517.00 owed as at September 1, 2020 was due to Tenant's failure to pay rent in March and April 2020. As explained, the Tenant would made additional rent payments to cover these arrears but would periodically fall behind in rent again. The Landlord's agent further advised that the claim comprises of three fines that were levied by the building's strata in the total amount of \$600.00. There is no documentary evidence provided by the Landlord in support of their claim for the strata fines.

The 10-Day Notice was issued claiming that the Tenant failed to pay rent in the amount of \$1,080.00 on August 10, 2021. The 10-Day Notice lists M.L. as the Landlord. The Landlord's agent advises that M.L. was the former general manager for the Landlord and that M.L. is no longer employed by the Landlord. The Landlord's agent confirmed the Landlord is the same as listed in the tenancy agreement. The Tenant denies knowing who M.L. was or that he acted on behalf of the Landlord.

The Landlord's agent advises that the last rent payment received by the Tenant was on June 30, 2020 in the amount \$1,200.00. No rent has been paid from July 1, 2021 to present.

The Tenant does not deny that he is in arrears in rent or that he was making additional payments to the Landlord to cover his arrears as explained by the Landlord's agent at the hearing. He explains that he lost his job in the spring of 2020 due to the COVID-19 Pandemic and was later diagnosed with leukemia. The Tenant further states that when he became a tenant, he was led to believe by the Landlord that a housing subsidy in the amount of \$375.00 could be made available to him through BC Housing. He says that the Landlord has the power to allot the subsidy to the building's occupants and that he filed to the paperwork for the subsidy on multiple occasions with no success.

The Landlord's agent denies promising or otherwise indicating that the Tenant would receive a rent subsidy. The Landlord's agent says that the Tenant has below market rent based on his eligibility. She further says that the subsidy is only available to eligible tenants, that the Tenant does not qualify, and that the Landlord has no control over who receives it.

The Tenant further said that he was asked by the Landlord to provide post-dated cheques and provided 11 such cheques to the Landlord in April 2021. The Tenant says that he sent the cheques and that the Landlord has not deposited them. The Tenant admits that he noticed the cheques were not being cashed but this was only three months ago.

The Landlord denies receiving post-dated cheques and indicates that his rent was paid in cash. The Landlord's agent further stated that the Landlord's practice is to send rent arrear notices each month a tenant is late in rent and that if the Tenant had provided cheques, he would have been aware they had not been deposited. None of these notices were put into evidence by the Landlord.

The Tenant continues to reside within the rental unit.

### Analysis

The Landlord seeks an order for possession and a monetary order for unpaid rent.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

Section 46(2) of the *Act* requires a notice to end tenancy issued under s. 46 to comply with the form and content requirements imposed by s. 52 of the *Act*. Here, the Landlord is listed as M.L. rather than the tenancy agreement as listed in the tenancy agreement. This discrepancy was why the Landlord's application was adjourned to a participatory hearing.

J.L. explained that M.L. was a former manager and employee for the Landlord. The Tenant was vague in his recollection of who M.L. was. As admitted by J.L. at the hearing, listing M.L. as the Landlord in the 10-Day Notice was an error.

I do not believe that the error of the listed Landlord should invalidate the 10-Day Notice. I find that it is reasonable to amend the notice as the Tenant ought to have known that the 10-Day Notice applied to him because it correctly lists his name and the address for his rental unit. Amending the notice does not prejudice the Tenant in that he knew what the 10-Day Notice was about and that it applied to him. The Tenant was clearly aware that there were outstanding issues with unpaid rent and that this formed the basis to the 10-Day Notice being issued.

I exercise my discretion under s. 68(1) of the *Act* to amend the notice to show the Landlord as listed in the tenancy agreement. Upon amending the 10-Day Notice, I find it complies with the formal requirement of s. 52 of the *Act*.

When a 10-day Notice to End Tenancy 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. This is made clear at the very top of the 10-Day Notice to End Tenancy, which states:

### HOW TO DISPUTE THIS NOTICE

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

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 was August 23, 2021.

As the Tenant continues to reside within the rental unit after the effective date of the 10-Day Notice, I find that the Landlord is entitled to an order for possession and shall have that order.

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.

The applicant seeking a monetary award bears the burden of proving their claim.

With respect to the Landlord's claim for unpaid rent, the parties are not in dispute that rent was owed and went unpaid. The Tenant argues that he provided post-dated cheques in April 2021 and that the Landlord failed to deposit the cheques. I do not accept the Tenant's argument as the ledger provided by the Landlord clearly indicates that those instances in which he paid rent after April 2021, he paid in cash.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. In the present circumstances, rent was not paid in accordance with the tenancy agreement and the Tenant had no lawful reason for withholding rent from the Landlord. I find that the Tenant breached their obligation to pay rent as set out in the Tenancy Agreement. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent.

The Landlord provides a rent ledger showing that as at September 2020 the Tenant was in arrears of \$1,517.00. Though the Landlord's agent attempted to explain this figure, her explanation does not correspond to the amount listed in the ledger. Further, it appears that a portion of this amount was related to condo fees in the amount of \$600.00, which is not unpaid rent. The Landlord provided no evidence to support their claim the condo fees in any event. As the applicant, the Landlord must prove their claim, including the specific amount set out in their claim. I find that Landlord has failed to do so with respect to the amount of \$1,517.00 as shown in the rent ledger they provided. This portion of their claim is dismissed without leave to reapply.

With respect to the amount owed from September 2020 onwards, I accept the Landlord's evidence as listed in the rent ledger, which was not directly contradicted by the Tenant in his evidence. The Tenant argued that he's faced personal health challenges and the loss of his employment in the spring of 2020. I empathize with the Tenant's circumstances. However, the Tenant is not permitted under the *Act* to forego payment of rent as listed in the tenancy agreement due these personal circumstances.

The Tenant further argued that the Landlord denied him a rent subsidy. I do not accept the argument nor is it relevant to this dispute. The parties agreed that rent of \$1,080.00 was due to the Landlord on the first day of each month as per the tenancy agreement.

I find that the Tenant is arrears of rent and owes compensation in lieu of rent taking the following into account:

Month	Rent Owed	Rent Paid	Balance
September 2020	\$1,080.00	\$1,200.00	\$120.00
October 2020	\$1,080.00	\$1,180.00	\$100.00
November 2020	\$1,080.00	\$0.00	-\$1,080.00
December 2020	\$1,080.00	\$1500.00	\$1,070.00
		\$650.00	



January 2021	\$1,080.00	\$500.00	-\$580.00
February 2021	\$1,080.00	\$1,080.00	\$0.00
March 2021	\$1,080.00	\$1,080.00	\$0.00
April 2021	\$1,080.00	\$0.00	-\$1,080.00
May 2021	\$1,080.00	\$1,080.00	\$950.00
		\$950.00	
June 2021	\$1,080.00	\$1,200.00	\$120.00
July 2021	\$1,080.00	\$0.00	-\$1,080.00
August 2021	\$1,080.00	\$0.00	-\$1,080.00
September 2021	\$1,080.00	\$0.00	-\$1,080.00
October 2021	\$1,080.00	\$0.00	-\$1,080.00
November 2021	\$1,080.00	\$0.00	-\$1,080.00
December 2021	\$1,080.00	\$0.00	-\$1,080.00
January 2022	\$1,080.00	\$0.00	-\$1,080.00
February 2022	\$1,080.00	\$0.00	-\$1,080.00
<b>Total Rent Arrears</b>			<b>\$9,020.00</b>

I am satisfied that the Landlord has quantified their monetary claim in the amount of \$9,020.00. I find that the Landlord could not have mitigate their damages with respect to this amount as the Tenant continues to reside within the rental unit.

As the Landlord was successful in their application, I find that they are entitled to the return of their filing fee and order that the Tenant pay the Landlord \$100.00 pursuant to s. 72(1). I further exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord retain the security deposit of \$540.00 in partial satisfaction of the total amount owed by the Tenant.

### Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy pursuant to s. 46(5) of the *Act*. As the Tenant continues to reside within the rental unit, the Landlord has established that they are entitled to an order for possession. Pursuant to s. 55 of the *Act*, I order that the Tenant provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order for possession.

I am satisfied that the Landlord has shown a monetary claim in the amount of \$9,020.00 for unpaid rent.

I make a total monetary order taking the following into account:

Item	Amount
Order for unpaid rent and compensation in lieu of rent	\$9,020.00
Landlord's filing fee to be paid by the Tenant pursuant to s. 72(1)	\$100.00
Less security deposit to be retained by the Landlord pursuant to s. 72(2)	-\$540.00
<b>TOTAL</b>	<b>\$8,580.00</b>

Pursuant to s. 67 of the *Act*, the Tenant shall pay **\$8,580.00** to the Landlord.

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

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: February 22, 2022

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Residential Tenancy Branch