



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR

### Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to the tenant.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated January 19, 2022, which should be read in conjunction with this decision.

At the participatory hearing, the landlord attended the teleconference hearing. The tenant did not attend the hearing. For this reason, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered.

The landlord testified that the tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by personal service on January 22, 2022.

Based on the landlord's testimony and evidence, I find the tenant was sufficiently served under the Act and the hearing proceeded in the tenant's absence.

During the hearing the landlord 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.

Preliminary and Procedural Matters-

In their application for dispute resolution, the landlord listed five tenants. However, the five tenants each had individual tenancies, individual units, and were not co-tenants.

The landlord listed the above tenant's rental unit only as the rental unit address in dispute.

I informed the landlord that each individual tenancy stands separate and apart and may not be included in the same application in this matter.

As a result of the above, the hearing proceeded against this tenant only, the tenant in the rental unit listed on the landlord's application.

Additionally, the written tenancy agreement for this tenant shows that the given name used by the landlord on the application was listed as a nickname, or preferred name, with the tenant's legal name also being used. For this reason, on any resulting orders I will list the tenant's full, legal name.

For the above reasons, I find it necessary to exclude the names of the remaining four tenants from the cover page and any resulting orders in this matter.

Additionally, the landlord said he was the owner of the residential property. The landlord listed on the written tenancy agreement shows a business name. As a result, I have included the name of the landlord listed on the written tenancy agreement in any resulting orders in this matter.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent?

### Background and Evidence

The written tenancy agreement filed by the landlord shows that this tenancy began on October 14, 2014, monthly rent payable by the tenant is \$800, due on the 1<sup>st</sup> day of the month, and a security deposit of \$400 was paid by the tenant at the beginning of the tenancy.

The landlord submitted that on December 4, 2021, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$760, plus \$15 in arrears, as of December 1, 2021. The effective vacancy date listed on the Notice was December 14, 2021. Filed in evidence was a copy of the Notice and proof of service of the Notice.

The landlord stated that the tenant has not vacated the rental unit and did not pay the amount listed on the Notice within 5 days, or at all. In addition, the tenant has not made any further rent payments since the Notice was issued.

### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

#### Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution. I have no evidence before me that the tenant applied to dispute the Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the Notice within five days of service.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Under section 90 of the Act, a document served by attachment to the door or other conspicuous place is deemed received three days later. Here, the Notice was attached on December 4, 2021, and deemed received on December 7, 2021.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act. Therefore, I find that the Notice effective date is December 17, 2021, 10 days after the deemed received date of December 7, 2021.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, or December 17, 2021.

As a result, I order the tenancy ended on December 17, 2021, and grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is advised that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenant.

### Conclusion

The landlord's application for an order of possession of the rental unit has been granted in the above terms.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 31, 2022