



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding YALE MANOR LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR-S, FF

### 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;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee

At the hearing, the landlord/owner and landlord's agent (agent) 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 Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on January 20, 2022. The landlord provided the Canada Post tracking number in the hearing as proof of service. That tracking number is listed on the style of cause page of this Decision.

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

The parties affirmed they were not recording the hearing.

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.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent, to monetary compensation for unpaid rent and to recover the cost of the filing fee?

### Background and Evidence

The landlord confirmed there was no written tenancy agreement. The landlord said that this tenancy began on December 1, 2019, monthly rent payable by the tenant is \$725, due on the 1<sup>st</sup> day of the month, and a security deposit of \$360 was paid by the tenant at the beginning of the tenancy.

The landlord said that on October 11, 2021, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$1,525 owed as of October 1, 2021. The effective vacancy date listed on the Notice was October 25, 2021. Filed in evidence was a copy of the Notice.

The agent 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 did not make the monthly rent payment in November and December 2021, or for January, February and March 2022, according to the landlord. The agent submitted that the tenant attempted to make a payment of \$600 in December 2021, but the landlord did not accept it. The landlord said that as of the date of the hearing, the tenant now owes the amount of \$5,150 in unpaid monthly rent, through March 2022.

### 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.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, or October 25, 2021.

As a result, I order the tenancy ended on October 25, 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.

Monetary claim-

I find it reasonable that the landlord be allowed to amend their original monetary claim in their application, to account for further unpaid rent as the tenant has yet to vacate the rental unit.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owes a total amount of unpaid rent of **\$5,150**.

I find the landlord has established a monetary claim of **\$5,150**, for the outstanding unpaid monthly rent, as noted above.

I grant the landlord recovery of their filing fee of **\$100**, due to their successful application.

I find the landlord has established a monetary claim of **\$5,250**, for the unpaid monthly rent and the filing fee, as noted above.

At the landlord's request, the landlord is directed to keep the tenant's security deposit of \$360 to partially satisfy the landlord's monetary award of \$5,250.

I grant the landlord a **monetary order** pursuant to section 67 of the Act for the balance due, in the amount of **\$4,890**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is **cautioned** that costs of such enforcement are subject to recovery from the tenant.

### Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted in the above terms.

I ordered the tenancy ended on October 25, 2021.

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 22, 2022