



# 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

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 to End Tenancy for Unpaid Rent dated: November 7, 2021 ("10 Day Notice"); with a request for a monetary order of \$1,678.00 for outstanding unpaid rent from the Tenant; and to recover the \$100.00 cost of his Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. 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 Landlord, who indicated that he 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 Landlord.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide his 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 Landlord testified that he served the Tenant with the Notice of Hearing documents in person on December 9, 2021. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

### Preliminary and Procedural Matters

The Landlord provided his email address in the Application, and he confirmed it in the hearing. However, the Landlord did not have an email address for the Tenant, so I confirmed that we would mail the Decision only to the Tenant at the rental unit address. The Decision and any Orders will be emailed to the Landlord at the email address he confirmed in the hearing.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider his written or documentary evidence to which he pointed or directed me in the hearing. I also advised the Landlord that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

### 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 Landlord confirmed in the hearing that the periodic tenancy began on June 1, 2020, with a monthly rent of \$1,280.00, due on the first day of each month. The Landlord confirmed that the Tenant paid him a security deposit of \$640.00, and no pet damage deposit.

The Landlord said that the Tenant made only a partial rent payment on October 1, 2021, and no rent payment on November 1, 2021, and therefore, the Landlord served him with the 10 Day Notice. The 10 Day Notice was signed and dated November 7, 2021, it has the rental unit address, it was served by posting a copy of it on the rental unit door on November 18, 2022. The 10 Day Notice has an effective vacancy date of November 18, 2021, which is automatically corrected by the Act to December 1, 2021, and it was served on the grounds that the Tenant failed to pay \$1,280.00 in rent owing to the Landlord on November 1, 2021.

The following chart details the rent owing to the Landlord, as set out by the Landlord in the hearing.

Date Rent Due	Amt Owing	Amt Received	Amt. Owing
Oct 1/21	\$1,280.00	\$882.00	\$398.00
Nov 1/21	\$1,280.00	\$0.00	\$1,280.00
Dec 1/21	\$1,280.00	\$0.00	\$1,280.00
Jan 1/22	\$1,280.00	\$0.00	\$1,280.00
Feb 1/22	\$1,280.00	\$0.00	\$1,280.00
Mar 1/22	\$1,280.00	\$0.00	\$1,280.00
Apr 1/22	\$1,280.00	\$0.00	\$1,280.00
	<b>TOTAL</b>		<b>\$8,078.00</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 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

...

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

. . . .

[emphasis added]

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on November 21, 2021, three days after it was posted on his rental unit door.

Section 26 of the Act states that 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 the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that he was owed **\$8,078.00** in unpaid rent as of April 1, 2022.

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 dispute the notice by making an application 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.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$1,280.00 is incorrect, as it was based on outstanding rent amount for November 2021 alone. Further, the Landlord said that the amount owing is now up to \$8,078.00, as the Tenant has not paid any rent since his partial payment in October 2021. The Landlord requested that his Application for a monetary order be increased to this amount to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64 (3) (c ) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord's error in the original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$1,280.00 to \$8,078.00.

In this case, I find the Tenant received the 10 Day Notice on November 21, 2021. Accordingly, pursuant to section 46 of the Act, the Tenants had until November 26, 2021, to dispute the 10 Day Notice by applying for dispute resolution or pay rent in full. I find that overdue rent has not been paid and that rent in the amount of \$8,078.00 remains outstanding. Accordingly, I find the Landlord has demonstrated an entitlement to and I, therefore, **award the Landlord** with recovery of **\$8,078.00** from the Tenant for unpaid rent, pursuant to sections 26, 46, and 67 of the Act.

Having been successful, I find the Landlord is entitled to recovery of the \$100.00 Application filing fee. I also find it is appropriate in the circumstances to order that the security deposit be applied to the amount due to the Landlord. Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$7,538.00, which has been calculated as follows:

<b><u>Claim</u></b>	<b><u>Amount</u></b>
Unpaid rent: 6 mths x \$1,280.00 + \$398.00 (Oct/21)	\$8,078.00
Filing fee:	\$ 100.00
<u>LESS security deposit:</u>	<u>(\$640.00)</u>
<b><u>TOTAL:</u></b>	<b><u>\$7,538.00</u></b>

I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

I award the Landlord with an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid rent for the past seven months, the **Order of Possession** will be **effective two days after service** of the Order on the Tenant.

### Conclusion

The Tenant has not paid rent in full for more than the last seven months, and he did not dispute the 10 Day Notice, therefore, the Landlord's Application for an Order of Possession and a Monetary Order are granted.

**Pursuant to section 55 of the Act**, I grant the Landlord an **Order of Possession**, and given that the effective vacancy date has passed, the Order of Possession will be 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, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is granted a **Monetary Order** of **\$7,538.00**, as calculated above. The Monetary Order may be filed in and enforced as an Order of the Provincial Court of British Columbia (Small Claims).

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: April 04, 2022

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Residential Tenancy Branch