



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR OPC MNR FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on April 11, 2022. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based off a 10 Day Notice to End Tenancy for unpaid rent or utilities;
- an order of possession based on a One Month Notice to End Tenancy for Cause; and,
- a monetary order for unpaid rent or utilities.

The Landlord's agent (herein referred to as 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, Notice of Dispute Resolution Proceeding, and his supporting evidence to the tenant on January 23, 2022, by registered mail. Proof of mailing was provided. I find the Tenant is deemed to have received this package on January 28, 2022, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

Further, the Landlord submitted and served to the Tenant a second evidence package. This second package was delivered to the Tenant, in person, on March 28, 2022. Proof of service was uploaded into evidence. I find the Tenant is sufficiently served with all documents and evidence for the purposes of this proceeding.

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.

### Preliminary Matters

The Landlord acknowledged that he did not have a copy of the 1 Month Notice to End Tenancy for Cause, and was only interested in pursuing his application for an order of possession, and for unpaid rent based off the 10 Day Notice to End Tenancy. I amend the Landlord's application accordingly, and dismiss the Landlord's application for an order of possession based off the 1 Month Notice to End Tenancy for Cause, without leave to reapply.

Further, I note the Landlord has named two tenants as the respondents for this application. However, as explained by the Landlord, and as noted in the tenancy agreement, only one Tenant signed the tenancy agreement (L.W.). As such, I have amended the Landlord's application accordingly. Only L.W. is a Tenant, and can be named as a respondent, and any other individuals would be considered roommates or occupants, with no contractual relationship with the Landlord.

### Issue(s) to be Decided

1. Is the landlord entitled to an order of possession based off a 10 Day Notice to End Tenancy for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement into evidence. The Landlord explained that the tenancy started in December 2020. The Landlord explained that this tenancy agreement includes the rental of a whole house, on several acres of land. The Landlord stated that the market value for rent for this house and property was around \$2,000.00 per month. The Landlord explained that when tenancy agreement was initially set up, the parties agreed to give the Tenant a discount on rent for the house for the first 8 months of the tenancy. Rent was due on the first of the month. More specifically, and as noted in the tenancy agreement, when the tenancy started, rent was discounted to \$500.00 per month (utilities not included) for December 2020 through till February 28, 2021. From March 1, 2021, until April 30, 2021, the rent was only discounted to \$1,000.00. From May 1, 2021, until June 30, 2021, rent was only discounted to \$1,500.00. From July 1, 2021, onwards, rent was \$2,000.00.

The Landlord explained that the Tenant only paid rent for the first couple of months, and since that time, he has stopped paying anything, and has allowed multiple RV units to park on the acreage. The Landlord stated that the Tenant paid rent in full for December 2020 (\$500.00), and January 2021 (\$500.00). However, in February 2021, he only paid \$300.00. Since that time, the Tenant has not paid any rent.

The Landlord explained that the Tenant owes the following amounts:

- \$200.00 February 2021
- \$1,000.00 March 2021
- \$1,000.00 April 2021
- \$1,500.00 May 2021
- \$1,500.00 June 2021
- \$2,000.00 July 2021
- \$2,000.00 August 2021
- \$2,000.00 September 2021
- \$2,000.00 October 2021
- \$2,000.00 November 2021
- \$2,000.00 December 2021
- \$2,000.00 January 2022
- \$2,000.00 February 2022
- \$2,000.00 March 2022
- \$2,000.00 April 2022

**Total: \$25,200.00**

The Landlord testified that he issued the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by giving it to the Tenant in person on November 8, 2021. Service of this document was witnessed by a third party. Proof of service was provided into evidence. The Landlord testified that the Tenant has not made any payments towards rent since February 2021, as laid out above.

### 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 have reviewed the testimony and evidence presented regarding the unpaid rent. I accept the undisputed testimony and evidence that rent was due on the first of the month, and that the Landlord and the Tenant agreed to a discounted rent amount from December 2020 – July 2021, at which point rent would be \$2,000.00. This schedule was laid out under the tenancy agreement. I do not find the manner in which rent changed over the first few months of the tenancy amounts to an illegal rent increase, as defined under the *Act*, and I accept the Landlord's explanation that the Tenant was given a heavy discount during the first few months of the tenancy to help the Tenant out, and it was understood up front that this was time limited until July 2021.

In this case, I find that the tenant owed past due rent at the time the 10 Day Notice was issued. The landlord personally served the 10 Day Notice to the Tenant on November 8, 2021, as per the proof of service document provided. I find the Tenant received the 10 Day Notice on November 8, 2021.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. The Tenant made no rent payments, and failed to dispute the 10 Day Notice. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay \$25,200.00 in past due rent.

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 substantially successful in this hearing, I order the tenant to repay the \$100.

### 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.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$25,300.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) 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: April 11, 2022

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Residential Tenancy Branch