



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-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"). The Landlord applied for an order of possession for unpaid rent, further to having served a 10 Day Notice dated August 3, 2021 ("10 Day Notice"), and to recover the \$100.00 cost of her Application filing fee.

The Landlord and her daughter, a translator for the Landlord ("Translator"), appeared at the teleconference hearing and gave affirmed testimony. However, no one attended on behalf of the Respondent/tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and the Translator, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlord and the Translator.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide her 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 Respondent 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 she served the Respondent with these documents by Canada Post registered mail, sent on March 18, 2022. The Landlord provided Canada Post tracking numbers as evidence of service. I checked the Canada Post website for tracking information, and it indicated that the package was delivered on March 21, 2022, at 10:55 a.m. Based on the evidence before me overall, I find that the Respondent 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 Respondent.

### Preliminary and Procedural Matters

The Landlord asked about the Respondent's status as a "tenant" under the Act, as this person was not identified as a tenant on the tenancy agreement, but her son was, and the Landlord said that he moved out in July 2021. The Landlord said that the Respondent has continued to live in the rental unit, but that she has not paid any rent. This issue of this Respondent's status as a Party was recently addressed and determined by another arbitrator in a previous hearing between the Parties. The other arbitrator found that the Respondent is, in fact, a "tenant" under the Act, pursuant to the tenancy agreement before me. In following the principle of *res judicata*, I am bound by the other arbitrator's determination in this matter. As such, I find that I have jurisdiction to hear and decide this matter, regarding the Respondent's status as a tenant. As such, I refer to the Respondent as the "Tenant" for the remainder of this Decision.

The previous decision noted above addressed the Landlord's application for recovery of unpaid rent for this tenancy; therefore, I find that it is not a matter before me. The other arbitrator had dismissed the Landlord's application for an order of possession in that hearing, but with leave to reapply on this issue.

The Landlord provided her email address in the Application and she confirmed it in the hearing. She said she did not know the Tenant's email address. The Landlord confirmed her understanding that the Decision would be emailed to her, mailed to the Tenant, and that any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised the Landlord that she 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 recovery of her \$100.00 Application filing fee from the Tenant?

### Background and Evidence

The Landlord submitted a copy of the tenancy agreement for this tenancy, and she confirmed in the hearing that the fixed-term tenancy began on January 15, 2020, ran to August 15, 2020, and then operated on a periodic basis. The Landlord confirmed that the tenancy agreement required the Tenant(s) to pay the Landlord a monthly rent of \$1,350.00, due on the first day of each month. The Landlord confirmed that the Tenant(s) paid her a security deposit of \$675.00, and no pet damage deposit. The Landlord confirmed that she still holds the security deposit in full.

The Landlord said she issued the 10 Day Notice, because the Tenant owed her \$1,350.00 in unpaid rent, which the Tenant had failed to pay the Landlord when it was due on August 1, 2021. The Landlord said she served the Tenant with the 10 Day Notice in person on August 3, 2021, and she provided a video demonstrating this in-person service on the Tenant, as stated.

There is no evidence before me that the Tenant paid the Landlord any of her rent owing following service of the 10 Day Notice, nor did the Tenant apply to dispute the 10 Day Notice at the RTB.

### 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.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.
- (6) If
- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
  - (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,
- the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

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 August 3, 2021, the same day it was given to her in person.

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, regulations, or 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 she was owed **\$1,350.00** in unpaid rent as of August 1, 2022. However, as the Landlord has already received a Monetary Order for the cumulative unpaid rent owing since the service of the 10 Day Notice, she did not apply for a monetary order for unpaid rent in this proceeding.

Further, section 46 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. In this case, I find the Tenant received the 10 Day Notice on August 03, 2021. Accordingly, pursuant to section 46, the Tenant had until August 08, 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. I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on August 13, 2021, the effective vacancy date of the 10 Day Notice.

As a result, 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 nine months, the Order of Possession will be **effective two days after service** of the Order on the Tenant.

Given the Landlord's success in this matter, I also award the Landlord with recovery of her **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act. The Landlord is authorized by section 72 of the Act to deduct \$100.00 from the Tenant's **\$675.00** security deposit in complete satisfaction of this award. Further, pursuant sections 62 and 67 of the Act, I authorize the Landlord to retain the remaining amount of the security deposit in partial satisfaction of any amount still owing to the Landlord from the Monetary Order granted in the previous hearing noted above.

Should the Tenant have already paid the Landlord this Monetary Order in full, she may apply to the RTB for recovery of the remaining \$575.00 owed to her on the security deposit.

### Conclusion

The Landlord is successful in her Application for an order of possession of the rental unit and recovery of the **\$100.00** Application filing fee from the Tenant, as the Landlord provided sufficient evidence to meet her burden of proof in this matter on a balance of probabilities.

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession 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.

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 27, 2022

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Residential Tenancy Branch