



# 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 initiated by way of a Direct Request Proceeding but was adjourned to this participatory hearing by the Adjudicator who initially considered the Application for Dispute Resolution.

This participatory hearing was convened to consider the Landlord's application for an Order of Possession, for a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on January 19, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on January 06, 2022 was sent to the Tenant, via registered mail, at the rental unit. The Agent for the Landlord stated that on February 11, 2022 the Landlord sent notice of this hearing to the Tenant, via registered mail, at the rental unit. The Landlord submitted Canada Post receipts that corroborate this testimony.

In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing. As the documents were properly served to the Tenant, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenant.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that

they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

### Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession and/or to a monetary Order for unpaid rent?

### Background and Evidence

The Landlord stated that this tenancy began on June 01, 2020; that the Tenant is required to pay monthly rent of \$1,520.000 by the first day of each month; and that rent was not been paid for any period after October 30, 2021.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which had a declared effective date of January 09, 2022, was personally served to the Tenant on December 30, 2021. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

At the hearing the Landlord applied to amend the Application for Dispute Resolution to include all rent that is currently due.

### Analysis

Section 26(1) of the *Act* requires tenants to pay rent to their landlord. On the basis of the undisputed evidence, I find that the Tenant has not paid the rent that was due on November 01, 2021, December 01, 2021, and January 01, 2022. I therefore find that the Tenant must pay the Landlord \$4,560.00 in rent for those months.

If rent is not paid when it is due, section 46(1) of the *Act* permits landlords to end the tenancy within ten days if appropriate notice is given to the tenant.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, was personally served to the Tenant on December 30, 2021, which declared that the Tenant must vacate the unit by January 09, 2022. As the Tenant owed rent on December 30, 2021, I find that the Landlord had the right to serve this Notice to End Tenancy and that it served as proper notice of the Landlord's intent to end the tenancy pursuant to section 46(1) of the *Act*.

Section 46(4) of the *Act* stipulates that a tenant has five days from the date of receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. I therefore grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

I find that it was reasonable for the Tenant to conclude that the Landlord would be seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the Landlord's application to amend the monetary claim to include all rent that is currently due.

As the Tenant has remained in possession of the rental unit for February, March, and April of 2022, I find that the Tenant is also obligated to pay rent of \$4,560.00 for those three months.

As the Tenant has remained in possession of the rental unit for the first three days of May of 2022, I find that the Tenant is also obligated to pay per diem rent of \$247.09 for those days.

I am unable to award compensation for any period after May 03, 2022, as it is entirely possible that the Tenant vacated the rental unit on May 03, 2022. The Landlord retains the right to file another Application for Dispute Resolution for future rent/lost revenue.

I find that the Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$9,367.09, which includes \$9,267.09 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

I grant the Landlord a monetary Order for \$9,367.09. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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: May 04, 2022

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Residential Tenancy Branch