



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding METCAP LIVING MANAGEMENT  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNRL-S FFL

### Introduction

This hearing was scheduled pursuant to a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord is seeking an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 6, 2022 (10 Day Notice), for a monetary order for rent arrears and recover the cost of the filing fee.

An agent for the landlord, LM (agent) attended the participatory hearing and was affirmed. During the hearing the agent 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.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated February 15, 2022 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence (Hearing Package) were served on the tenant by registered mail on February 23, 2022. The registered mail tracking number has been included on the cover page of this decision for ease of reference. According to the Canada Post registered mail website tracking information, the Hearing Package was successfully delivered to the tenant on February 24, 2022. Based on the above and without any evidence before me to prove to the contrary, I accept that the tenant was served with the Hearing Package on February 24, 2022 as indicated above. Give the above, I find this matter to be undisputed by the tenant. Pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.3 and 7.4, the hearing continued with the tenant present.

### Preliminary and Procedural Matters

The agent testified that in addition to the rent owed in the original claim for \$2,000.00, the tenant has not paid additional rent and as of the date of the hearing owes a total of \$7,000.00 in rent arrears. I find that the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, from \$2,000.00 to \$7,000.00. The agent also stated that they no longer wish to offset the security deposit from the amount owing as they will wait for the tenant to provide a written forwarding address after they vacate the rental unit.

Furthermore, the agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenant does not have an email address, the decision will be sent by regular mail to the tenant.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 1, 2021. Monthly rent in the amount \$2,000.00 is due on the first day of each month.

The Proof of Service document submitted in evidence indicates that the 10 Day Notice was served by leaving a copy in the mailbox or mail slot of the tenant on January 6, 2022. The 10 Day Notice indicates that \$2,000.00 was owed in rent as of January 1, 2022. The landlord stated that the tenant continues to occupy the rental unit and owes \$7,000.00 in rent arrears between December 2021 and May 2022. The agent stated that although for those 6 months the total would be \$10,000.00, the tenant paid \$3,000.00 in May 2022, leaving a balance owing of \$7,000.00 in rent arrears. The agent testified that the tenant did not dispute the 10 Day Notice or pay the rent owing. The effective vacancy date listed on the 10 Day Notice was January 21, 2022, which has passed.

The landlord is seeking an order of possession, a monetary order for unpaid rent, and to recover the cost of the filing fee.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** – I accept the agent's undisputed testimony and I find that the tenant failed to pay any of the amount claimed by the landlord as owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice on January 9, 2022. I have used January 9, 2022, as section 90 of the Act states that documents placed in the mailbox are deemed served 3 days after they are placed in the mailbox.

The effective vacancy date of the Notice is listed as January 21, 2022, which has passed. I find the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was January 21, 2022. The tenant continues to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

I find the tenancy ended on January 21, 2022 and that the tenant has overheld the rental unit since that date.

**Claim for rent arrears** – Firstly, as the tenant was served and did not attend the hearing, I find the application of the landlord to be unopposed by the tenant. I accept the disputed testimony of the landlord that the tenant owes rent as claimed in the amount of \$7,000.00 and as noted above.

Pursuant to section 26 of the Act, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has breached section 26 of the Act by failing to comply with a standard term of the tenancy agreement, which stipulates that rent is due monthly on the first day of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$7,000.00** as indicated above.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the Act.

Pursuant to section 38 and 67 of the Act, I grant the landlord a monetary order pursuant to section 67 of the Act in the total amount of **\$7,100.00** owing by the tenant to the landlord.

### Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenancy ended on January 21, 2022.

The landlord has established a total monetary claim of \$7,100.00 and has been granted a monetary order in that amount. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The decision and orders will be emailed to the landlord for service on the tenant. The tenant will be sent the decision by regular mail as indicated above.

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: May 12, 2022

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Residential Tenancy Branch