



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned *ex-parte* application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:49 A.M. to enable the tenant FG to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by agent JL (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The landlord served the notice of direct request proceeding and the evidence via registered mail on February 04, 2022 and the notice of hearing and the interim decision on February 25, 2022. The landlord mailed both packages to the rental unit's address and submitted into evidence the registered mail receipts. The tracking numbers are recorded on the cover page of this decision.

Based on the landlord's convincing testimony and the tracking numbers, I find the landlord served the tenant the notices of direct request proceeding and hearing, the interim decision and the evidence in accordance with section 89(2)(b) of the Act.

Per section 90(c) of the Act, the tenant is deemed to have received the notice direct request proceeding and the evidence on February 09, 2022.

Per section 90(a) of the Act, the tenant is deemed to have received the notice of hearing and the interim decision on March 02, 2022.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

#### Preliminary Issue – Partial Withdrawal of the Application

At the outset of the hearing the landlord advised he is not seeking a monetary order for unpaid rent.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the landlord's application to withdraw the claim for a monetary order for unpaid rent.

#### Issues to be Decided

Is the landlord entitled to:

1. an order of possession?
2. an authorization to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on December 04, 2020. Monthly rent is \$1,212.00, due on the first day of the month. At the outset of the tenancy a security deposit (the deposit) of \$597.50 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It indicates the tenant is FG.

The interim decision states:

I find that the tenant's name listed on page one of the residential tenancy agreement submitted by the landlord is different than the tenant's name listed on page six of the tenancy agreement. I find the discrepancy in the tenant's name raises a question that can only be addressed at a participatory hearing.

The landlord stated the tenant is also known as JG and signed the tenancy agreement as JG.

The landlord served the Notice by attaching it to the rental unit's door on January 04, 2022. The landlord submitted a witnessed proof of service (RTB34).

The landlord submitted into evidence a copy of the January 04, 2022 Notice. It indicates the tenant did not pay rent in the amount of \$1,212.00 due on January 01, 2022. The effective date is January 17, 2022.

The landlord testified the tenant paid January 2022 rent in full in early February 2022 and did not have rental arrears as of May 31, 2022. The landlord does not know if the tenant paid June 2022 rent. The tenant did not dispute the Notice and continues to occupy the rental unit.

The landlord issued receipts for "use and occupancy only" for all the rent payments received after the landlord served the Notice.

### Analysis

I accept the uncontested testimony that the landlord served the Notice on January 04, 2022 in accordance with section 88(g) of the Act. Per section 90(c) of the Act, the tenant is deemed to have received the Notice on January 07, 2022.

Based on the landlord's convincing undisputed testimony and the tenancy agreement, I find that the parties agreed to a tenancy and the tenant is obligated to pay monthly rent in the amount of \$1,212.00 on the first day of each month.

Based on the landlord's convincing undisputed testimony, I find the tenant paid rent due on January 01, 2022 in early February 2022, the landlord issued receipts for "use and occupancy only" and the tenant continues to occupy the rental unit.

Section 46(4) and (5) of the Act states:

- (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.

The tenant could dispute the Notice or pay rent in the amount of \$1,212.00 until January 12, 2022, per section 46(4) of the Act.

I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the ground to end tenancy and the effective date and it is in the approved form.

Based on the above, I find the tenancy ended on January 17, 2022, per section 44(1)(a)(ii) of the Act.

I award the landlord an order of possession, per section 55(2)(b) of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain \$100.00 from deposit in full satisfaction of the monetary award.

### Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Pursuant to section 72 of the Act, I authorize the landlord to retain \$100.00 from the deposit to recover the filing fee.

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: June 03, 2022

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Residential Tenancy Branch