



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request (the Application) that was adjourned to a participatory hearing. The Landlords filed the Application under the *Residential Tenancy Act* (the Act) on January 25, 2022, seeking:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- Recovery of unpaid rent; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on June 2, 2022, and was attended by the Landlord P.H. and the Landlord's adult child, A.H., who acted as his interpreter and agent. All testimony provided was affirmed. They were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure, and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent(s) must be served with a copy of the Application and the Notice of Hearing. The Landlord stated that the Notice of Dispute

Resolution Proceeding (NODRP) package, which includes the Application and the Notice of Hearing, and the documentary evidence before me, was personally served on the Tenant in the presence of a witness on March 5, 2022. I accept the undisputed and affirmed testimony of the Landlord and their Agent and find that the Tenant was personally served with the above noted documents on March 5, 2022. Records at the Residential Tenancy Branch (the Branch) state that the NODRP was emailed to the Landlord on March 2, 2022. I therefore find that they were served on the Tenant in compliance with section 59(3) of the *Act* and rules the 3.1 and 3.14 of the Rules of Procedure. The hearing therefore proceeded as scheduled, despite the absence of the Tenant pursuant to rule 7.3 of the Rules of Procedure, and the documentary evidence before me from the Landlord was accepted for consideration.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application and confirmed in the hearing.

#### Preliminary Matters

At the hearing the Landlord stated that additional rent is now owed as the Tenant has failed to pay rent for subsequent months since the Application was filed. As a result, the Landlord requested that the Application be amended to include additional outstanding rent owed since the Application was filed.

Rule 4.2 of the Residential Tenancy Branch Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made, the Application may be amended at the hearing. It also states that if an amendment to an application is sought at the hearing, an amendment to an application for dispute resolution need not be submit or served.

Based on the above, I therefore amend the Landlord's Application to include outstanding rent owed after the date the Application was filed.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice)?

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the periodic (month-to-month) tenancy commenced on August 15, 2019, that rent in the amount of \$1,850.00 is due on the first day of each month, which includes water, garbage, and laundry, and that a \$925.00 security deposit is required. Although the tenancy agreement lists the person named as the Tenant/Respondent in the Application as the tenant, a different landlord is named. At the hearing the Landlord/Applicant stated that they purchased the property from the previous owner and took possession on November 15, 2021.

The Landlord stated that they have received no rent from the Tenant since they took possession of the property, and that they were advised by the seller/previous landlord that the Tenant had not paid rent for November 2021. The Landlord acknowledged that the \$925.0 security deposit paid by the Tenant was transferred to them as part of the sale of the property, and stated that they wish to retain it until after the tenant has vacated.

The Landlord stated that as the Tenant had not paid rent in November 2021 or December 2021, the 10 Day Notice was served. The Landlord stated that they attempted to personally serve the Tenant on December 3, 2021, in the presence of a witness, J.H., but when the Tenant opened the door, they refused to accept service and the 10 Day Notice was subsequently left for them the door of the rental unit. A witnessed and signed Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities #RTB-34 (Proof of Service) was submitted in support of this testimony.

The 10 Day Notice in the documentary evidence before me is signed and dated December 3, 2021, has an effective date of December 13, 2021, is on a 2021 version of the form, and states that as of December 1, 2021, \$1850.00 + \$925.00 is outstanding. The Landlord stated that as of the date of the hearing, the Tenant owes rent in the amount of \$1850.00 per month for December 2021 - June 2022, and \$925.00 for November 2021, for a total of \$13,875.00. As a result, the Landlord sought an Order of Possession for the rental unit and a Monetary Order for outstanding rent. No one

appeared on behalf of the Tenant to provide any evidence or testimony for my consideration.

### Analysis

Section one of the *Act* states that a landlord, in relation to a rental unit, includes the owner of the rental unit. Although the Applicant is not the landlord named in the tenancy agreement before me, I accept as fact the undisputed testimony of the Applicant that they purchased the property from the previous owner/previous landlord and took possession on November 15, 2021. As a result, I am satisfied that the Applicant is a landlord under the *Act* and that a tenancy to which the *Act* applies exists between the Applicant, who is the Landlord, and the Respondent, who is the Tenant. I am also satisfied that rent in the amount of \$1,850.00 is due on the first day of each month under the tenancy agreement. Based on the affirmed and uncontested testimony of Landlord, I am also satisfied that the Tenant has not paid rent for November 2021 - June 2022.

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*, the regulations, or the tendency agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. As there is no evidence before me that the tenant had a right under the *Act* to deduct all or a portion of the rent, I find that they did not.

Section 46 of the *Act* states that 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. It states that a notice under this section must comply with section 52 and has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under the *Act* to deduct from rent. It also states that within five days after receiving a notice under this section the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution, and that 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 the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the uncontested and affirmed testimony of the Landlord and the Proof of Service before me, I am satisfied that the Tenant was personally served with the 10 Day

Notice on December 3, 2021, despite the fact that they refused to take the 10 Day Notice from the Landlord when they opened the door, pursuant to Residential Tenancy Policy Guideline (Policy Guideline) #12, which states that if the person being personally served declines to take the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.

Having reviewed the 10 Day Notice in the documentary evidence before me, I am satisfied that it complies with the requirements set out under section 52 of the *Act*. As I have already found above that the Tenant did not have a right under the *Act* to deduct or withhold rent, that the Tenant has not paid rent for November 2021 - June 2022, and there is no evidence before me that the Tenant disputed the 10 Day Notice as allowable under section 46(4)(b) of the *Act*, I therefore find that the Tenant was conclusively presumed to have accepted the 10 Day Notice on December 3, 2021, the date I find that they were personally served with it. As a result, I also find that the Tenant was required to vacate the rental unit by December 13, 2021, which is the effective date of the 10 Day Notice. As the effective date of the notice has passed, I grant the Landlord an Order Possession for the rental unit effective two days after service, pursuant to section 55(2)(b) of the *Act*.

Pursuant to sections 26 and 57(3) of the *Act*, I find that the Landlord is owed \$12,148.33 in outstanding rent and compensation for overholding, up to and including the date of the hearing, which was June 2, 2022, calculated as follows:

- \$925.00 for November 2021;
- \$1,850.00 per month for December 1, 2021 - May 31, 2021; and
- \$123.33 for June 1, 2022 – June 2, 2022 ( $\$1,850.00/30 \times 2$ ).

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 67 of the *Act* I therefore grant the Landlord a Monetary Order in the amount of \$12,248.33. If the Tenant has overheld the rental unit past June 2, 2022, the Landlord remains entitled to file a subsequent application with the Residential Tenancy Branch seeking compensation for any of the additional days that the Tenant has over held the rental unit.

### Conclusion

I grant the Landlord's Application seeking an Order of Possession for the rental unit, recovery of unpaid rent, and recovery of the filing fee.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$12,248.33**. 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, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 55 of the *Act*, I grant the Landlord an Order of Possession effective 2 days after service 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, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render them, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

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: July 8, 2022

---

Residential Tenancy Branch