



# 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 matter commenced by way of an ex parte Direct Request Proceeding pursuant to section 55(4) of the Residential Tenancy Act (the Act). However, in an Interim Decision dated August 5, 2022, an adjudicator ordered that the matter be adjourned to a participatory hearing. That participatory hearing was scheduled on today's date.

The Landlords seek the following relief, pursuant to the Act:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- to recover the filing fee.

The Landlords were represented at the hearing by GC, an agent. GS also attended the hearing on behalf of the Landlords, but their testimony was not required. Both GC and GS provided a solemn affirmation. The Tenant did not attend the hearing.

GC testified that the Tenant was served with a Notice of Dispute Resolution Proceeding package on August 5, 2022. Copies of Canada Post registered mail receipts which showed the date and time of purchase and included the tracking number were submitted in support. Pursuant to sections 89 and 90 of the Act, I find the Tenant is deemed to have received these documents on August 10, 2022, five days after they were mailed.

Those in attendance were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure.

However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent?
2. Are the Landlords entitled to a monetary order for unpaid rent?
3. Are the Landlords entitled to recover the filing fee?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

GC testified that the tenancy began on June 1, 2017. GC confirmed that rent of \$913.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$425.00, which the Landlord holds. A copy of the tenancy agreement was submitted into evidence.

GC testified the Tenant did not pay rent when due. Accordingly, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 13, 2022, for \$1,400.00 in unpaid rent (the 10 Day Notice). GC testified the 10 Day Notice was served on the Tenant by registered mail on June 13, 2022. Service in this manner was supported by copies of Canada Post registered mail receipts which show the date and time of purchase and include the tracking number.

The 10 Day Notice is signed and dated, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

On behalf of the Landlord, GC testified that the Tenant also did not pay rent when due on July 1, August 1, and September 1, 2022. Accordingly, rent of \$4,139.00 is currently outstanding (\$1,400.00 + \$913.00 + \$913.00 + \$913.00). GC confirmed that no partial payments have been made by the Tenant and that the Tenant continues to occupy the rental unit.

The Tenant did not attend the hearing to dispute the Landlords' evidence.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the Act confirms:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Further, section 46(1) 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.”

The Landlords sought an order of possession. In this case, GC testified, and I find, that the 10 Day Notice was served on the Tenant by registered mail on June 13, 2022. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received five days later. Therefore, I find the 10 Day Notice is deemed to have been received by the Tenant on June 18, 2022. Accordingly, pursuant to section 46(4) of the Act, the Tenant had until June 23, 2022, to either pay rent in full or to dispute the 10 Day Notice by filing an application for dispute resolution. However, there was no evidence the Tenant filed an application for dispute resolution, and the affirmed testimony of GC confirms rent has not been paid when due. As a result, and pursuant to section 46(5) of the Act, I find that the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice and must vacate the rental unit. Therefore, the Landlords are entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Further, I find the Tenant did not pay rent as alleged by the Landlords. Therefore, I find the Landlords have established an entitlement to unpaid rent in the amount of \$4,139.00.

Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the application.

Conclusion

The Landlords are granted an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$4,239.00, which is comprised of \$4,139.00 for unpaid rent and \$100.00 in recovery of the filing fee. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 6, 2022

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Residential Tenancy Branch