



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

File #910071691: FFT, MNDCT, RPP, MNRT

File #210072872: OPR-DR, MNR-DR, FFL

### Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order for return of his filing fee pursuant to s. 72;
- an order for monetary compensation pursuant to s. 67;
- an order for the return of personal property pursuant to s. 65; and
- an order for repayment of the cost of emergency repairs pursuant to ss. 33 and 67.

The Landlord files their own application, seeking the following relief under the *Act*:

- an order of possession pursuant to s. 55 after serving the Landlord with a 10-Day Notice to End Tenancy (the “10-Day Notice”);
- an order for unpair rent pursuant to s. 67; and
- return of their filing fee pursuant to s. 72.

The Landlord’s application was filed as a direct request application but was adjourned to a participatory hearing following the decision of the adjudicator on July 12, 2022.

K.B. appeared as the Tenant. C.Z. appeared as the Landlord’s agent and was joined by K.W. as the Landlord’s bookkeeper.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that he served his application and evidence on the Landlord. The Landlord acknowledged receipt of the Tenant's application materials. I find that the Tenant served his application and evidence on the Landlord in accordance with the *Act*.

#### Preliminary Issue – Service of the Landlord's Application Materials

The Landlord's agent advised that the Landlord's application and evidence was served via registered mail sent on June 17, 2022 and the Notice of Reconvened Hearing was sent via registered mail on August 5, 2022. The Landlord's agent provided registered mail tracking numbers for both packages and confirmed that the application materials were mailed to the address for the Tenant's rental unit.

The Tenant denies receiving any of the Landlord's application materials indicating that he first received notice of the hearing on August 17, 2022 after receiving mail from the Residential Tenancy Branch. The Tenant further indicated that he has had mail mixed by Canada Post with a local plumbing company.

Section 89 of the *Act* permits service of application materials via registered mail sent to the address in which the person resides. I have reviewed the tracking information provided by the Landlord, which confirms the testimony provided by the Landlord, though both show that packages were not retrieved from the post office.

Section 90 of the *Act* sets out when documents are deemed to have been received depending on the method of service. In the case of registered mail, documents are deemed to have been received five days after they have been sent, as set out under s. 90(a) of the *Act*.

Policy Guideline #12 provides guidance with respect to the service provisions of the *Act*. It specifies that the deeming provisions under s. 90 form evidentiary presumptions of service, that can be rebutted under the circumstances. Policy Guideline #12 also states the following:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I have considered the parties submissions. I am not persuaded that it would be unfair or unreasonable to apply the deeming provisions under s. 90 of the *Act*. The Landlord has provided tracking information for the registered mail packages, both of which have not been retrieved by the recipient. The Tenant indicated at the hearing that he was in and out of town for work, but he did not indicate that he was gone from June to August. It is a bare denial of service, which runs in the face of the Landlord's evidence that two registered mail packages were sent to the rental unit. I find it is far more likely that the Tenant claims to have not received the Landlord's evidence packages because he did not go to the post office to retrieve the items. As made clear in Policy Guideline #12, that is not an acceptable reason for not applying the deeming provision under s. 90(a) of the *Act*.

I find that the Landlord's application materials were served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the original package on June 22, 2022 and the second on August 10, 2022.

#### Preliminary Issue – Style of Cause in the Tenants' Application

The two applications have different individuals listed as the Landlord. The Landlord's application has M.P. listed as the Landlord. The Tenant's application has C.Z. listed as the agent.

At the hearing, I confirmed that the correct Landlord is M.P., as listed in the tenancy agreement. The parties confirmed this was the case. I enquired if there were any objections to amending the style of cause for the Tenant's application such that it reflects the Landlord as listed in the tenancy agreement. Neither party objected.

Accordingly, I amend the Tenant's application pursuant to Rule 4.2 of the Rules of Procedure such that the Landlord is listed as M.P..

#### Preliminary Issue – Tenant's Claim for Compensation for Emergency Repairs

The Tenant's application lists that the Tenant seeks \$50.00 to be paid by the Landlord for the cost of emergency repairs. Through the course of the Tenant's submissions, he was unable to explain or recall why he claimed for compensation for emergency repairs.

It is the Tenant's claim, he bears the burden of proving it. As he was unable to recall why he even advanced the claim for compensation for emergency repairs, I dismiss it without leave to reapply.

### Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to an order for unpaid rent?
- 3) Is the Tenant entitled to monetary compensation?
- 4) Is the Tenant entitled to the return of personal property?
- 5) Is either party entitled to the return of their filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on June 1, 2006.
- Rent of \$600.00 is payable each month by the Tenant.
- The Tenant paid a security deposit of \$300.00 to the Landlord.

A copy of the tenancy agreement was put into evidence by the Landlord. It indicates that rent is payable on the first day of each month. The Landlord's agent confirmed that this was changed to the 15<sup>th</sup> day of each month to accommodate the Tenant's payment schedule. The Tenant confirms that rent was no longer due on the first and indicates he post-dated his rent cheques to the 15<sup>th</sup>, but that the Landlord told him so long as it was paid by the 20<sup>th</sup> that was all that mattered.

The Landlord's agent advised that 10-Day Notice was posted to the Tenant's door on April 16, 2022 as the Tenant's rent cheque had bounced for April 2022. The Landlord's evidence includes a proof of service form indicating that the agent was witnessed posting the 10-Day Notice on the Tenant's door on April 16, 2022 at 10:11 AM. The Landlord's evidence also includes a photograph of the notice in a plastic bag posted to the Tenant's door with the date written on the bag.

The Tenant denies receiving the 10-Day Notice. He indicates that he only learnt of the 10-Day Notice in August 2022 after being notified by the Residential Tenancy Branch of the application. The Tenant says that he was working out-of-town on April 16<sup>th</sup> for a job and that he cannot recall when he was back in town.

The Landlord's agent advised that the Tenant did not pay rent within the notice period, nor did he file an application disputing the 10-Day Notice. The Landlord's agent says that the rent for April 2022 was paid in cash on or about September 1, 2022. The Landlord's agent further testified that rent for June 2022 was late, but has been paid such that there are no arrears to be paid by the Tenant at the present time. The Landlord indicates that he was given a post-dated cheque for September 22, 2022 for rent in September 2022.

The Landlord's agent further testified to the Tenant being frequently late in paying rent and that he has had to serve various notices to end tenancy for the Tenant to pay rent. The Landlord's agent confirmed the Landlord is seeking to enforce only the 10-Day Notice from April 2022. The Landlord emphasized that rent received after the 10-Day Notice was served, rent was received for use and occupancy only.

The Tenant testified that he was unaware his rent cheque had bounced in April 2022 and that he paid his rent immediately upon being notified in August 2022.

The Tenant further testified that he has access to storage within the basement of the property. He says that in June 2021 there was a plumbing issue in the basement that was fixed within a week by the Landlord. The Tenant testified that a couch and loveseat which belonged to him were carried out of the basement and left outside by the Landlord while the plumbing was repaired. The Tenant says that the couch and loveseat were wrecked by the elements and taken away by the Landlord's agent.

The Tenant says that he paid for their replacement at a cost of \$1,200.00 and that he seeks this amount from the Landlord. The Tenant indicates the value is based on a couch and loveseat he purchased used. He says that he paid cash for the used items and that there is no receipt.

The Landlord's agent indicates that there was a leak in the hot water tank in the basement, with that water leaking onto the Tenant's couch. The agent further testified that the Tenant kept a lot of items in the basement such that accessing the hot water tank was an issue and that the couch was taken outside to accommodate the repairs.

During the hearing, the Tenant acknowledged that there were many items of his in the basement and that he has been cleaning it over time.

The Landlord's agent testified that the Tenant's girlfriend told him to leave it outside as they were considering swapping them out for the ones within the rental unit. The Landlord's agent says this is what was done but emphasized that a tarp was placed over the couch. I am further told that the couch was left outside for the summer by the Tenant, that the tarp came off, and that he eventually hauled the couch out to the dump as it was left outside over that period.

The Tenant indicated that his claim for the return of personal property related to the couch.

### Analysis

The Landlord seeks to enforce the 10-Day Notice. The Tenant seeks compensation for the cost of a couch.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

Dealing first with service of the 10-Day Notice, the Landlord's evidence is persuasive that the notice was posted to the Tenant's door on April 16, 2022. The Landlord has a proof of service form, showing service was witnessed. There is a photograph with the notice on the door on April 16, 2022. The Landlord's agent provided affirmed testimony that the 10-Day Notice was served as stated in the supporting evidence.

The Tenant provides a bare denial of service. He says that he was out-of-town for work on April 16, 2022. However, he could not recall the period he was out-of-town or when he returned. There is no supporting evidence to show that he was, in fact, not at home to see that a notice had been posted to his door.

I find that the Tenant's repeated denials of service are not credible. The preponderance of evidence supports that the 10-Day Notice was posted to the door on April 16, 2022 and that there is no reason why I should not apply the deemed receipt provisions under s. 90. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*.

Pursuant to s. 90(c) of the *Act*, I deem that the Tenant was served with the 10-Day Notice on April 19, 2022.

I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). As the 10-Day Notice was deemed to have been received on April 19, 2022, the effective date of the notice is automatically corrected by s. 53 of the *Act* to April 29, 2022.

There was some discrepancy in the parties' evidence on when rent is due, with the Landlord's agent saying it was on 15<sup>th</sup> day of each month and the Tenant saying that he post-dated his cheques to the 15<sup>th</sup> but so long as he paid by the 20<sup>th</sup> it was fine. The fact that the Tenant admits to post-dating his cheques to the 15<sup>th</sup> confirms that this was the date the parties understood rent to be due. I find that the parties agreed rent would be due on the 15<sup>th</sup> and that the 10-Day Notice was issued after rent was due for April 2022.

Pursuant to s. 46(4) of the *Act*, a tenant has 5 days from receiving a 10-day notice to end tenancy to either repay the overdue rent or file an application to dispute the notice. This is made clear at the very top of the 10-day notice to end tenancy, which states:

#### **HOW TO DISPUTE THIS NOTICE**

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, it is undisputed that the Tenant did not file an application disputing the 10-Day Notice and that he paid the overdue rent in August or September 2022. I find that the Tenant failed to comply with the 5-day time limit imposed under s. 46(4) of the *Act*.

Given this, s. 46(5) comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date is April 29, 2022. As the Tenant continues to reside within the rental unit, I find that the Landlord is entitled to an order of possession.

The Landlord confirmed that no arrears for rent are outstanding, though there was mention that a rent cheque was post-dated to September 22, 2022. I make no orders for unpaid rent and make no order for rent due on September 15, 2022 as this is the same day the hearing occurred. If there is any unpaid rent unpaid from September 2022, the Landlord may chose to seek that amount after the due date has passed.

The Tenant seeks compensation for his couch. Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Without considering the other aspects of the four-part test, I find that the Tenant has failed to mitigate his damages with respect to the couch. The Landlord needed access to the basement to fix a plumbing leak. During the hearing the Tenant himself admitted that he had a lot of stuff in the basement. It is entirely reasonable that the items blocking access to the affected area, being the couch and loveseat, were removed by the Landlord. The Landlord's agent says that the Tenant's girlfriend said they may swap it out with the one on the rental unit. The Tenant knew these items were no longer in storage, saw them, and did not bring them into his rental unit rather leaving them to the mercy of the elements for some time. The Tenant bears responsibility for the damage to his personal property. I dismiss the Tenant's claim for compensation without leave to reapply.

The Tenant seeks an order for return of his personal property. The Landlord admits hauling the couch to the dump. In the Tenant's words, the couch was "wrecked". It is entirely reasonable of the Landlord to take a couch, which was left outside in the common area of the property and wrecked by the elements, to the dump. The alternative would be for the Landlord to permit the Tenant to keep a wrecked couch in



the common area of the property. As the couch was destroyed, it had no value and cannot be returned. I dismiss the Tenant's claim for the return of personal property.

### Conclusion

I grant the Landlord an order of possession. The Tenant shall provide vacant possession of the rental unit within **two (2) days** of receiving the order of possession.

The Landlord's claim for unpaid rent is dismissed without leave to reapply. I make no findings or comment on rent that may become due on September 15, 2022.

The Tenant's claims for compensation related to the couch are dismissed without leave to reapply.

The Tenant was unsuccessful in his application. I find that the Tenant is not entitled to the return of the filing fee. The Tenant's claim under s. 72 of the *Act* is dismissed without leave to reapply.

As the Landlord was successful, I find that they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the Landlord retain \$100.00 from the security deposit in full satisfaction of their filing fee.

It is the Landlord's obligation to serve the order of possession on the Tenant. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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: September 15, 2022

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Residential Tenancy Branch