



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Maxsave Real Estate Services  
Ltd and [tenant name suppressed to protect privacy]

## **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 filed by the Landlord under the *Residential Tenancy Act* (the *Act*) on August 11, 2022, seeking:

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

An Interim-Decision was rendered on September 23, 2022, adjourning the *ex parte* direct request and ordering that a participatory hearing be convened. The hearing was convened by telephone conference call at 1:30 PM on October 17, 2022, and was attended by the Landlord G.S. and their agent L.S. (the Agent), both of whom provided affirmed testimony. The Tenant did not attend. The Landlord and Agent were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The participants 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 participants were asked to refrain from speaking over me and any other participants, should they appear, and to hold their questions and responses until it was their opportunity to speak. The participants 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 must be served with a copy of the Application and Notice of Hearing, and any documentary evidence to be relied on by the Applicant at the hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below. The Landlord and Agent stated that the original Notice of Dispute Resolution Proceeding Package (NODRP) for the Direct Request, and the original documentary evidence was sent by registered mail to the Tenant at the rental unit, on August 26, 2022. The Landlord and Agent stated that it was also served in person on that date.

The Landlord and Agent stated that the new NODRP for the participatory hearing, the Interim-Decision, and additional documentary evidence were sent to the Tenant by registered mail on September 26, 2022, and provided me with the registered mail tracking number, which I have recorded on the cover page of this decision.

Although the Landlord and Agent stated that neither registered mail package was picked up by the Tenant, they testified that they were sent to the rental unit where the Tenant still resides, and that they confirmed that as of the night prior to the hearing, the Tenant was still occupying the rental unit. Regardless of whether the Tenant received the first registered mail package, I accept the undisputed and affirmed testimony of the Landlord and Agent that it was personally served on the Tenant on August 26, 2022, which is the same day Residential Tenancy Branch (Branch) records indicate the original NODRP was emailed to the Landlord. As a result, I find that the Tenant was personally served with the original NODRP and the original documentary evidence from the Landlord on August 26, 2022, in compliance with sections 59(3) and 89(1)(a) of the Act and rule 3.1 of the Rules of Procedure.

I accept the undisputed and affirmed testimony of the Agent and Landlord that the new NODRP for the participatory hearing, the Interim-Decision, and additional documentary evidence was sent to the Tenant by registered mail at the rental unit address on September 26, 2022. Although the Landlord and Agent stated that this registered mail was never claimed by the Tenant, they stated that they advised the Tenant it was available and told them to pick it up. Residential Tenancy Policy Guideline (Policy Guideline) #12 states that where a document is served by Registered Mail, the refusal of the party to accept or pick up the item, does not override the deeming provision and where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing. As a result, I deem the above noted documents served on the Tenant on September 29, 2022, in compliance with sections 59(3), 89(1)(c), and 90(a) of the Act and rule 3.1 of the Rules of Procedure.

The NODRP states the date and time of the hearing, that the hearing will be conducted by telephone conference call and provides the phone number and access code for the hearing. It also instructs participants that they are to call into the hearing themselves no more than five minutes before the start of the hearing. I confirmed that the details shown in the NODRP were correct and I note that the Landlord and Agent were able to attend the hearing promptly using the information contained in the NODRP. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. As the Landlord, the Agent, and I attended the hearing on time and ready to proceed, and I was satisfied that the Tenant was served with the NODRP as required by the Act and the Rules of Procedure, and therefore had notice of the hearing and an opportunity to attend, the hearing proceeded as scheduled, despite the absence of the Tenant or an agent acting on their behalf. Although the teleconference remained open for the 34-minute duration of the hearing, no one attended the hearing on the Tenant's behalf.

Although I have reviewed all evidence and testimony before me accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

#### 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 a Monetary Order for 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 fixed term tenancy began on February 22, 2017, that rent in the amount of \$950.00 is due on the first day of each month, that a security deposit in the amount of \$475.00 is required, and that the tenancy may continue on a month to month basis after the expiration of the

fixed term on February 28, 2018. At the hearing, the Landlord and the Agent stated that these are the correct terms for the tenancy agreement, that rent has been increased over the course of the tenancy and is now \$988.00, and that the full \$475.00 security deposit was paid by the Tenant and is currently held in trust by the Landlord.

The Landlord and Agent stated that the Tenant had been making sporadic rent payments of various amounts, sometimes paying more than what was owed, and sometimes paying less. The Landlord and Agent stated that the Tenant has been carrying forward an outstanding balance owed of \$62.00 since March of 2022. The Landlord and Agent stated that although the tenant paid \$988.00 on May 30, 2022, for June 2022 rent, the Tenant still owed \$62.00 carried forward from previous months. As a result, they stated that the 10 Day Notice was served. The 10 Day Notice before me is signed and dated June 2, 2022, has an effective date of June 12, 2022, and states that rent in the amount of \$62.00, that was due on June 1, 2022, remains unpaid.

A witness and signed proof of service form was submitted for my review and consideration stating that the 10 Day Notice was attached to the door of the rental unit on June 2, 2022, at 2:39 PM and at the hearing the Landlord and Agent provided affirmed testimony that this was correct. The Landlord and Agent stated that although some rent has been paid since the 10 Day Notice was served, the Tenant paid no rent between the date that the 10 Day Notice was served and July 8, 2022, when the Tenant paid \$977.00. The Landlord and Agent stated that no rent was paid for September or October of 2022, and that the Tenant currently owes \$2,049.00 in outstanding rent.

### Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**46** (1) 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.

However, section 46(4) and 46(5) of the *Act* also state:

**46** (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.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88(g) and 90(c) of the Act, I find that the Tenant was deemed served with the 10 Day Notice on June 5, 2022, if not earlier received. I also find that the Tenant was obligated to pay the monthly rent on time and in full on the first day of each month. As there is no evidence before me to the contrary, I accept the undisputed and affirmed testimony of the Landlord and Agent that rent is currently \$988.00 per month. Based on the uncontested and affirmed testimony and documentary evidence before me for consideration, I am satisfied that \$62.00 in rent was due at the time the 10 Day Notice was served, and that none of this amount was paid by the Tenant within the time period set out under section 46(4)(a) of the Act. Based on the above, and as there is no evidence before me that the Tenant disputed the 10 Day Notice by filing an Application for Dispute Resolution with the Branch, I therefore find that the Tenant is conclusively presumed to have accepted the 10 Day Notice and was therefore required to vacate the rental unit in compliance with it, pursuant to section 46(5) of the Act.

Although the effective date on the 10 Day Notice was June 12, 2022, as I have already found above that the Tenant was not deemed served with the 10 Day Notice until June 5, 2022, I find that the effective date does not comply with section 46(1) of the Act. I therefore find that the effective date is automatically corrected to June 15, 2022, pursuant to section 53 of the Act, and that the tenancy therefore ended on that date. I also find that the Tenant has been overholding the rental unit since that date. As a result, and as the Landlord and Agent testified no rent has been paid for September or October of 2022, I grant the Landlord an Order of Possession effective two days after service on the Tenant pursuant to section 55(2)(b) of the Act.

Although the Landlord and agent stated that \$2,049.00 in outstanding rent is currently owed, this amount includes the full amount of rent for October. I have already found above that the tenancy ended on the corrected effective date of the 10 Day Notice, June 15, 2022, pursuant to section 46(5) of the Act. Section 57(1) of the Act defines an “overholding tenant” as a tenant who continues to occupy a rental unit after the tenant’s tenancy is ended. Section 57(3) of the Act states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Based on the above I find that the Landlord is only entitled to compensation for overholding, calculated on a per-diem basis, for the period of June 16, 2022 – October 17, 2022, the date of the hearing, plus any outstanding rent previously owed. As the Landlord and Agent stated at the hearing that the Tenant paid \$977.00 on July 8, 2022, and \$988.00 on August 9, 2022, I therefore find that the tenant owes \$1,613.16, calculated as follows:

- \$62.00 in previously owed rent;
- \$11.00 in compensation for overholding for July of 2020;
- \$988.00 in compensation for overholding for September of 2020; and
- \$552.16 in compensation for overholding for October 2022, calculated at a per-diem rate of \$32.48.

If the Tenant continues to overhold the rental unit, the Landlord is entitled to seek further compensation for overholding and/or any loss of rent by filing an Application for Dispute Resolution with the Branch, should they wish to do so.

As the Landlord was successful in their claims, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, and in accordance with the Landlord’s request, I therefore authorize the Landlord to withhold the \$475.00 security deposit currently held in trust, in partial recovery of the above noted amount owed. Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$1,238.16 for the remaining balance owed, and I order the Tenant to pay this amount to the Landlord.

### Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** 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.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$1,238.16**. 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 72(2)(b) of the Act, the Landlord is also permitted to retain the \$475.00 security deposit.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: October 19, 2022

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Residential Tenancy Branch