



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH POOL XVI LP c/o Metcap Living Management  
Inc. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated May 20, 2022 ("10 Day Notice"); for a monetary order for unpaid rent of \$5,762.90; and to recover their \$100.00 Application filing fee.

An agent for the Landlord, L.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about it. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on July 7, 2022, and another evidence package sent on October 13, 2022. The Agent provided Canada Post tracking numbers as evidence of service. Based on the evidence before me in this matter, I find that the Tenant was

deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

### Preliminary and Procedural Matters

The Agent provided her email address in the Application and she confirmed it in the hearing. The Agent said that the Tenant's email address does not seem to be working, therefore, we will send the Decision to the Tenant via mail and email. The Agent also confirmed her understanding that the Decision would be sent to both Parties in this way, and any Orders would be sent to the appropriate Party.

In the hearing, the Agent said that the amount of rent arrears has risen since the 10 Day Notice was served, and that the amount now owing on unpaid rent alone is \$11,529.41. The Agent requested that the Landlord's Application for a monetary order be increased to this amount to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64 (3) (c ) of the Act, I amend the Application for dispute resolution to update the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing in full. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after updating the original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from **\$5,762.90 to \$11,529.41.**

### Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

### Background and Evidence

The Agent confirmed the details of the tenancy agreement, saying that the tenancy began on March 31, 2019, with a (current) monthly rent of \$2,806.47, plus parking, due on the first day of each month. The Agent agreed that the Tenant paid the Landlord a security deposit of \$1,382.60, and a pet damage deposit of \$1,382.50.

10 Day Notice

The Agent submitted a copy of the 10 Day Notice, and she confirmed the following details of that Notice in the hearing. The 10 Day Notice was signed and dated May 20, 2022, it has the rental unit address, it was served via registered mail on May 20, 2022, with an effective vacancy date of June 6, 2022, which is automatically corrected by the Act to be June 4, 2022. The 10 Day Notice was served on the grounds that the Tenant failed to pay the Landlord \$5,762.90 when it was due on May 1, 2022. The Agent provided the registered mail tracking number for proof of service.

The Tenant did not apply to the RTB to dispute the validity of the 10 Day Notice, nor did he or someone on his behalf attend the hearing to dispute the 10 Day Notice.

Monetary Claim for Unpaid Rent

The Landlord has also applied for a monetary order for unpaid rent in the updated amount of \$11,529.41. The Agent directed my attention to a Tenant ledger she submitted for the Landlord, which sets out the amounts the Tenant has and has not paid in rent, parking, and other fees. The ledger starts at the beginning of the tenancy and it goes to November 2, 2022 - one day prior to the hearing.

The Agent directed me to figures in the ledger that determine how much is owed by the Tenant in unpaid rent alone, as the Landlord applied for an order for unpaid rent, rather than compensation for other money owed. As such, I find that the Landlord may claim only unpaid rent in this Application; however the Landlord may apply for further dispute resolution, claiming compensation for monetary loss or other money owed.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

10 Day Notice

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the 10 Day Notice on May 25, 2022, five days after it was served by registered mail.

Section 46 (5) of the Act states that if a tenant who has received a 10 Day Notice does not apply for dispute resolution within five days after the date the tenant receives the notice, 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 by that date.

As there is no evidence before me that the Tenant disputed the 10 Day Notice, I find that he is conclusively presumed under section 46 (5) of the Act to have accepted the 10 Day Notice, and I find that the tenancy, therefore, ended on June 4, 2022.

As a result, I find that the Tenant is overholding in the rental unit and the Landlord is therefore entitled to an Order of Possession **pursuant to section 55 (2) (b)** of the Act. As the corrected effective date has passed and the Agent testified that rent since the 10 Day Notice was served has not all been paid in full, the **Order of Possession** will, therefore, be **effective two days after service on the Tenant**.

#### Monetary Claim for Unpaid Rent

Section 26 of the Act states: "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 tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord. I find there is sufficient evidence to show that the Tenant owes the Landlord \$11,529.41 in rent, as of November 1, 2022. As a result, I **award the Landlord \$11,529.41** from the Tenant for outstanding rent up to November 1, 2022, pursuant to sections 26, 46 and 67 of the Act.

Given their success in this Application, I also award the Landlord is recovery of their **\$100.00** Application filing fee pursuant to section 72 of the Act.

#### Summary and Offset

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security and pet damage deposits of **\$2,765.10** in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain the Tenant's **\$1,382.60** security deposit and his **\$1,382.50** pet damage deposit. The Landlord is granted a Monetary Order from the Tenant of **\$8,864.31** for the remainder of the monetary awards owing, pursuant to section 67 of the Act.

## Conclusion

The Landlord is successful in their claim, as they provided sufficient evidence to support their burden of proof on a balance of probabilities. Further, the Tenant failed to dispute the 10 Day Notice, and therefore, he is conclusively presumed by the Act to have accepted that the tenancy ended on June 4, 2022.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord **effective two 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.

The Landlord's Application for recovery of unpaid rent is successful in the amount of **\$11,529.41**. Further, the Landlord is awarded recovery of the **\$100.00** filing fee for this Application from the Tenant.

The Landlord is authorized to retain the Tenant's security and pet damage deposits of **\$2,765.10** in partial satisfaction of the Landlord's monetary awards. I grant the Landlord a Monetary Order under section 67 of the Act from the Tenant in the amount of **\$8,864.31** for the remainder of the monetary awards owed to the Landlord.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) 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: November 03, 2022

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Residential Tenancy Branch