



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding EASTERN SUN HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned *ex-parte* application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:43 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord, represented by agent AK (the landlord) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure and section 95(3) of the Act.

I accept the landlord's testimony that the tenant was served with the notice of hearing, the interim decision and the evidence (the materials) by registered mail on January 13, 2023 in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision). The landlord mailed the package to the rental unit's address.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5<sup>th</sup> day after it is

mailed. Given the evidence of registered mail, the tenant is deemed to have received the materials on January 18, 2023, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent

#### Preliminary Issue – partial withdrawal

At the outset of the hearing the landlord affirmed that he is not seeking a monetary order for the unpaid rent, as he does not believe he will be able to collect the money from the tenant.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the application to withdraw the claim for a monetary order.

#### Issues to be Decided

Is the landlord entitled to:

1. an order of possession?
2. an authorization to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the ongoing tenancy started on February 01, 2019. Monthly rent is \$1,075.00, due on the first day of the month. At the outset of the tenancy a security deposit (the deposit) of \$575.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord served the Notice on September 30, 2022 by attaching it to the rental unit's front door.

The landlord submitted a copy of the Notice into evidence. It is dated September 30, 2022 and the effective date is October 19, 2022. It states the tenant failed to pay rent in the amount of \$9,675.00 due on September 01, 2022.

The landlord stated that he served the Notice with a ledger explaining the amount of rental arrears. The landlord testified the tenant has not paid rent in full since the beginning of the tenancy and that the tenant was aware and agreed with the amount of rental arrears.

The landlord said the tenant paid rent in November and December 2022, January and February 2023 and did not dispute the Notice. The landlord provided the tenant with receipts for use and occupancy for the rent received after he served the Notice.

### Analysis

I accept the uncontested testimony that the landlord served the Notice on September 30, 2022, in accordance with section 88(g) of the Act. Per section 90(c) of the Act, the tenant is deemed to have received the Notice on October 03, 2022.

Based on the landlord's convincing testimony and the tenancy agreement, I find that the landlord and the tenant agreed to a tenancy and the tenant is obligated to pay the monthly rent in the amount of \$1,075.00 on the first day of each month.

Pursuant to section 46(1) of the Act, 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.

Pursuant to section 46(4) of the Act, the tenant could have disputed the Notice by submitting an application until October 08, 2022.

Based on the landlord's convincing testimony and the Notice, I find the tenant did not pay rent due September 01, 2022 and did not dispute the Notice.

I find the form and content of the Notice complies with section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states the ground for ending the tenancy and it is in the approved form.

Section 68(2) of the Act states:

(2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,

(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy

Based on the above, as the tenant is currently occupying the rental unit, I find the tenancy ends on the date of this decision, per sections 44(1)(a)(ii) and 68(2)(a) of the Act.

I award the landlord an order of possession, per section 55(2)(b) of the Act, as the tenant has not disputed the Notice and the time to submit an application has expired.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain \$100.00 from the deposit in satisfaction of the monetary award.

### Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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: May 05, 2023

---

Residential Tenancy Branch