



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, FFL

### Introduction

This hearing was scheduled to convene at 11:00 a.m. on September 22, 2023 by way of conference call concerning an application made by the landlord seeking an order of possession for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. The landlord also called 2 witnesses who also gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord and the landlord's second witness each testified that the tenant was served with the Notice of Dispute Resolution Proceeding and evidence on July 12, 2023. The landlord gave the documents to the tenant and the witness testified that the witness knocked on the tenant's door. The tenant answered and asked who the witness was. The witness told the tenant that the witness was there on behalf of the landlord, gave the tenant the package, and the tenant shut the door as she took the documents inside. The Proof of Service document provided for this hearing is incorrect as it states that it was the landlord who gave the package to the tenant. However, the witness gave the package to the tenant and the landlord witnessed that.

I am satisfied that the tenant was personally served with the hearing package, which is in accordance with the *Residential Tenancy Act*.

All evidence of the landlord has been reviewed, and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

**The landlord** testified that this month-to-month tenancy began on March 18, 2023 and the tenant still lives in the rental unit. Rent in the amount of \$1,850.00 is payable on the 1<sup>st</sup> day of each month, although the tenancy agreement, a copy of which has been provided for this hearing is silent on the date that rent is due. The landlord testified that on March 18, 2023 the tenant paid \$1,700.00, which included a \$925.00 security deposit and a proportionate amount of rent for the first partial month of the tenancy. The security deposit is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a townhome, and the landlord does not reside on the property.

The landlord further testified that on June 14, 2023 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by hand-delivering it to the tenant. A copy of the Notice has been provided for this hearing and it is dated June 14, 2023 and contains an effective date of vacancy of June 24, 2023 for unpaid rent in the amount of \$1,850.00 that was due on June 1, 2023.

The tenant has not served the landlord with a Notice of Dispute Resolution Proceeding disputing the Notice, and has not paid the rent. Arrears have accumulated and the tenant is currently in arrears the sum of \$7,400.00 for the months of June, July, August and September, 2023.

**The landlord's witness** (EC) testified that he observed the landlord serve the tenant with a document which was important to the situation of the tenant failing to pay rent. The witness attended with the landlord at the rental unit twice. The landlord knocked on the door and the witness stayed back and the landlord handed the document to the tenant. The second occasion, the witness does not know what the document was.

Analysis

The *Residential Tenancy Act* specifies that a tenant must pay rent when it is due, and if the tenant fails to do so, the landlord may serve a 10 Day Notice to End Tenancy For

Unpaid Rent or Utilities. The tenant then has 5 days to pay the rent in full or dispute the Notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, having heard from the landlord and the landlord's witness, I am satisfied that the tenant was personally served with the Notice on June 14, 2023. The landlord testified that the tenant has not disputed the Notice, and I have no such application from the tenant. I also accept the undisputed testimony of the landlord that the tenant has not paid the rent and arrears have continued to accumulate. Therefore, I am satisfied that the landlord is entitled to an order of possession. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant. The tenant must be served with the order of possession, which may be enforced by filing it with the Supreme Court of British Columbia.

The *Act* also states that where a landlord requests an order of possession after a notice to end the tenancy has been given and the tenant has not disputed it, I may, without any further dispute resolution process grant an order requiring payment of the rent. In this case, I accept the undisputed testimony of the landlord that the tenant has not paid rent for 4 months, and is in arrears the sum of \$7,400.00. I find that the landlord is entitled to a monetary order in that amount.

Since the landlord has been successful with the application the landlord is also entitled to recover the \$100.00 filing fee from the tenant.

I grant a monetary order in favour of the landlord as against the tenant in the amount of \$7,500.00. The tenant must be served with the order, which may be filed for enforcement in the Provincial Court of British Columbia, Small Claims division as a order of that Court.

The landlord currently holds a security deposit in the amount of \$925.00, but has not applied to keep it. Therefore, I order that the parties deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

### Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$7,500.00.

I order the parties to deal with the security deposit in accordance with the *Residential Tenancy Act*.

This order is final and binding and may be enforced.

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 22, 2023

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Residential Tenancy Branch