



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR, OPC, MNR, FFL

### Introduction

This hearing dealt with two Landlord Applications for Dispute Resolution that were joined together and set to be heard at the same time. The Landlords applied for an Order of Possession and Monetary Order for unpaid rent on August 12, 2024. The Landlords also applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause on August 19, 2024.

I heard that two brothers (referred to by initials P.M. and B.M.) currently own the property but the rentals at the property are managed by their father, H.M. Signed documents were submitted to demonstrate that the owners authorize H.M. to manage the rentals and appear on their behalf. H.M. attended the hearing and was affirmed.

There was no appearance by the Tenant.

### Preliminary and Procedural Matters

#### 1. Service of proceeding packages

H.M. submitted that the first proceeding package was sent to the Tenant at the rental unit address on August 16, 2024 and the second proceeding package was sent to the Tenant at the rental unit address on August 22, 2024, by registered mail. Registered mail receipts were provided as proof of service. A search of the tracking numbers showed that the registered mail packages were not picked up by the Tenant. H.M. confirmed the Tenant is still residing at the rental unit based on H.M. seeing the Tenant at the property on September 2, 2024.

Section 90 of the Act deems a person to be served with documents five days after mailing, even if the person refuses to accept or pick up their mail, so that a person

cannot avoid service. I am satisfied the Landlords met their obligation to serve the Tenant with notification of this proceeding in a manner that complies with the Act and I deem the Tenant served five days after mailing.

## 2. Naming of parties

The owners P.M. and B.M. were named as Landlords on the first Application for Dispute Resolution. H.M. was named as the Landlord on the second application. Based on the evidence before me, I am satisfied that H.M. is an agent for the owners. Under the definition of “Landlord” under section 1 of the Act, a landlord includes an owner of the property and the owner’s agent. Therefore, I am satisfied that it is appropriate to name all three applicants as Landlords in the style of cause.

H.M requested the application be amended to add another name the Tenant also uses. The Landlords had named the Tenant on the Application for Dispute Resolution using the name that appears on the tenancy agreement. However, the rent payments made by e-transfer revealed a different first name. Also, the signature of the Tenant on the tenancy agreement appears more consistent with the name appearing on the e-transfers. H.M. testified that he asked the Tenant about the two different first names and the Tenant confirmed that uses both names. I granted the Landlord’s request and I have added the tenant’s name as it appearing on the e-transfers received for rent payments.

## 3. Amendment during hearing

The Landlords had submitted evidence that while awaiting for this proceeding, the Tenant did not pay any rent for September 2024 and he continues to occupy the rental unit. The Landlords requested the application be amended to include unpaid rent for September 2024.

Rule 7.12 of the Rules of Procedure permits an Application for Dispute Resolution to be amended at the hearing where circumstances can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find it reasonable to anticipate that the Landlords would seek unpaid rent for September 2024 at this proceeding given the Tenant’s decision to continue to occupy

the rental unit and not pay rent for September 2024. Therefore, I permitted the amendment during the hearing.

Issue(s) to be Decided

1. Are the Landlords entitled to an Order of Possession for unpaid rent or cause?
2. Are the Landlords entitled to a Monetary Order for unpaid rent?
3. Award of the filing fee(s).

Background and Evidence

The Tenant and the property manager H.M. executed a tenancy agreement for a one year fixed term tenancy set to commence on May 1, 2024 and expire on April 30, 2025. The monthly rent was set at \$2,200.00 due on the first day of every month. The rent was to be sent as follows: \$700.00 to H.M. and \$1,500.00 to the owners.

A security deposit of \$1,100.00 was supposed to be paid but it never was.

On July 21, 2024, H.M. served the Tenant with a One Month Notice to End Tenancy for Cause, in person with a witness, with an effective date of August 31, 2024. The Tenant did not file to dispute the One Month Notice.

The Tenant paid \$700.00 to H.M. for August 2024, on July 26, 2024 but did not pay the \$1,500.00 remainder. On August 2, 2024 H.M. attached a 10 Day Notice to End Tenancy for Unpaid Rent to the rental unit door indicating rent of \$1,500.00 was outstanding. The Tenant did not pay the outstanding rent or dispute the 10 Day Notice.

The Tenant did not vacate the rental unit in accordance with either of the above notices to end tenancy and did not pay any rent for September 2024. On September 2, 2024 H.M. personally served the Tenant with another 10 Day Notice indicating rent of \$3,700.00 was outstanding, being comprised of \$1,500.00 for August 2024 and \$2,200.00 for September 2024. The Tenant did not dispute the 10 Day Notice or pay the outstanding rent.

The Landlords seek an Order of Possession effective as soon as possible. The Landlords seek a Monetary Order for unpaid rent totalling \$3,700.00, plus filing fees.

### Analysis

I accept the unopposed evidence provided to me by the Landlords, including the testimony and documentation. Accordingly, I find the Tenant was obligated to pay rent of \$2,200.00 on the first day of every month for a fixed term of one year, and comply with all other enforceable terms of the tenancy agreement and the Act.

I also accept that on July 21, 2024 the Tenant was served with a One Month Notice to End Tenancy or Cause. I have reviewed the One Month Notice and I find it is in the approved form and is duly completed. Under section 47 of the Act, the Tenant was conclusively presumed to have accepted the tenancy would end and the Tenant was required to vacate the rental unit by the effective date of August 31, 2024 since he did not file to dispute the One Month Notice.

The Tenant also remained obligated to pay the full amount of rent for August 2024 since the tenancy was still in effect on August 1, 2024, as provided under section 26 of the Act. Section 26 of the Act requires a Tenant to pay rent when due in accordance with their tenancy agreement, even if the Landlord has violated the Act, regulations or tenancy agreement, unless the Tenant has a legal right to withhold rent. I was not provided any evidence to suggest the Tenant had a legal right to withhold rent. Therefore, I find the Landlords were within their right to serve the Tenant with a 10 Day Notice when they did on August 2, 2024. I have reviewed the 10 Day Notice issued on August 2, 2024 and I am satisfied it is in the approved form and it is duly completed. Since the Tenant did not pay the outstanding rent or file to dispute the 10 Day Notice, under section 46 of the Act, the Tenant was conclusively presumed to have accepted the tenancy would end for unpaid and the Tenant was required to vacate the rental unit by the effective date of the 10 Day Notice.

Under section 55(2) a Landlord may apply for an Order of Possession where a Landlord has served the Tenant with a notice to end tenancy and the Tenant has not disputed the notice to end tenancy and the time period to do so has expired. Having been satisfied the Landlord served the Tenant with notices to end tenancy that meet the form and content requirements of section 52 of the Act and the time limit for disputing both of the above notices expired by the time the Landlord made the Applications for Dispute Resolution, I find the Landlords are entitled to an Order of Possession. Provided to the Landlords with this decision is an Order of Possession effective seven (7) days after service upon the Tenant.

I further find the Landlords entitled to an award for rent of \$1,500.00 for August 2024 and loss of rent for September 2024 of \$2,200.00 considering the tenant continued to hold possession of the rental unit. Therefore, I award the Landlord \$3,700.00 for unpaid and/or loss of rent as requested.

I recognize the Landlord paid two filing fees in filing two Applications for Dispute Resolution; however, I only award the Landlords recovery of one filing fee from the Tenant. Two applications were unnecessary and the requests could have been accommodated in one application, or by way of an Amendment to an Application for Dispute Resolution which is not subject to a filing fee.

In light of the above, the Landlords are provided with a Monetary Order in the sum of \$3,800.00, including the filing fee.

### Conclusion

The Landlords are provided an **Order of Possession effective seven (7) days after service upon the Tenant**. The Order of Possession may be enforced through the Supreme Court of British Columbia if the Tenant does not comply with the order.

The Landlords are provided a Monetary Order in the sum of \$3,800.00 to serve and enforce upon the Tenant. The Monetary Order may be enforced in Provincial Court (Small Claims) if the Tenant does not comply with the order.

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 11, 2024

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Residential Tenancy Branch