



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lombardy Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, FFL

### Introduction

This hearing was scheduled to convene at 11:00 a.m. this date 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 was represented at the hearing by an agent who gave affirmed testimony and provided evidentiary material in advance of the hearing. 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's agent testified that the tenant was served with the Application and notice of this hearing, along with all of the landlord's evidence (the Hearing Package) by registered mail on May 31, 2021 and has provided a copy of a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt also stamped with that date by Canada Post. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence provided has been reviewed and 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's agent testified that this month-to-month tenancy began on March 1, 2021 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 is payable

on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is manufactured home owned by the landlord in a manufactured home park, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenant has failed to pay rent when it is payable under the tenancy agreement. On April 24, 2021 the tenant paid \$450.00, leaving arrears of \$550.00 for that month. On May 12, 2021 the tenant paid another \$450.00, accumulating the arrears to \$1,100.00. On June 2, 2021 the tenant gave the landlord \$450.00 and another \$600.00 on June 3, 2021, leaving arrears of \$1,050.00. Nothing has been paid for July or August and arrears are now \$3,050.00.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 2, 2021 personally, and a copy has been provided as evidence for this hearing. It is dated May 2, 2021 and contains an effective date of vacancy of May 12, 2021 for unpaid rent in the amount of \$1,550.00 that was due on May 1, 2021. A copy of a Proof of Service document has also been provided for this hearing which states that the landlord's agent served the document in that manner.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice and the landlord seeks an Order of Possession and recovery of the filing fee.

### Analysis

The *Residential Tenancy Act* specifies that where a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent in full or dispute the Notice. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the tenant paid some rent after the Notice was issued, but not the full amount due, and not within 5 days of issuing the Notice. I accept the undisputed testimony of the landlord's agent that as of May 2, 2021 the tenant was in arrears \$550.00 for April and \$1,000.00 for May, 2021. The landlord's agent testified that the tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice, and I have no such application before me. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and 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 landlord has not applied for a monetary order for unpaid rent, however, since the landlord has been successful with the application, the landlord is entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in favour of the landlord in that amount and I order that the landlord be permitted to keep that amount from the security deposit held in trust, or may otherwise recover it by filing it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

### 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* and I order that the landlord be permitted to keep that amount from the security deposit held in trust, or may otherwise recover it.

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: August 30, 2021

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Residential Tenancy Branch