



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on July 10, 2013 in accordance with Section 89. The landlord provided testimony that she had confirmed online with Canada Post that the tenant received and signed for the hearing documents on July 10, 2013.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

The landlord confirmed that she had been served with the tenant's hearing package for a hearing scheduled to be heard on September 9, 2013. That hearing was set based on the tenant's Application for Dispute Resolution seeking to cancel this 10 Day Notice to End Tenancy for Unpaid Rent.

As today's hearing dealt with the issue of the non-payment of rent and the landlord's Application for an order of possession and monetary order for that unpaid rent; I find that failure on the part of the tenant to attend this hearing after being sufficiently served with notice of the hearing is a deliberate attempt on the part of the tenant to delay the proceedings. As such, the hearing proceeded and I heard the landlord's undisputed testimony. The phone lines were open for 15 minutes and the tenant failed to attend.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on February 17, 2013 for a month to month tenancy beginning on March 1, 2013 for a monthly rent of \$700.00 due on the 1<sup>st</sup> of each month with a \$350.00 security deposit required;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 2, 2013 with an effective vacancy date of July 10, 2013 as a result of \$700.00 in unpaid rent;
- Copies of email correspondence between the parties regarding the tenant's request a mid-month date for the payment of rent and the landlord's decline of that offer.

The landlord submits that the tenant had failed to pay the full rent for the month of May 2013 in the amount of \$150.55 and that she has not paid any rent for July or August 2013. The landlord also confirmed in her testimony the tenant had only paid \$175.00 of the security deposit.

From the email correspondence provided as evidence the tenant wrote in an email dated July 1, 2013 to the landlord (reproduced as written):

"I am going to be paying July rent at mid month. I am sorry, but my accounts receivable come in at that time and up until mid month.

I would be better if I just switched my rent payments to mid month as we originally discussed when signing the rental agreement."

Despite this promise to pay rent by mid-month the landlord testified that she has not received any payment from the tenant.

### Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days 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.

While I accept the tenant has submitted an Application to dispute the 10 Day Notice issued on July 2, 2013 and therefore cannot be conclusively presumed to have accepted the end of the tenancy, I also note that to the date of this hearing the tenant has failed to provide payment of any rent owed to the landlord.

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

As there is no provision under the *Act* for a tenant to pay rent late because their accounts receivable come in later in the month and because the tenant has provided no evidence against the landlord's Application I find that even if this matter was held over or adjourned until the September 9, 2013 hearing the facts we not be any different.

As such and based on the landlord's undisputed testimony I find that on the day after rent was due in the month of July 2013 and after the tenant wrote to the landlord stating she would not be paying rent the landlord issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent that is compliant with the requirements under Section 46, with the exception of an incorrect effective vacancy date.

Section 53 of the *Act* states if a landlord or tenant gives notice to end a tenancy with an effective date that does not comply with the requirements set out in the relevant section the party is seeking to end the tenancy under the effective date is deemed to be changed to the earliest date permitted under the applicable Section. As such, I amend the effective date to be July 12, 2013.

I also find that despite promising the landlord, before receiving the Notice, that she would pay the landlord by "mid-month" the tenant has failed to pay the landlord any amount of money towards any arrears for the month of May or July 2013 and in fact has also now failed to pay rent for August 2013.

### Conclusion

Based on the above, I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,600.55** comprised of \$1,550.55 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$175.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,425.55**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: August 02, 2013

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Residential Tenancy Branch