



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF, O, CNR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The tenant confirmed receipt of the landlords' notice of hearing package. The landlord confirmed receipt of the tenant's notice of hearing package. On the basis of this evidence, I am satisfied that the both parties are deemed served with the dispute resolution packages filed by the other party pursuant to sections 89 and 90 of the *Act*.

### Preliminary Issue

The tenant did not submit any documentary evidence. The landlords stated that they served the tenant with their documentary evidence package on September 21, 2015 by personally delivering a copy to an occupant of the rental premises. The landlord stated that this person signed in receipt of the evidence. The tenant disputed this stating that he was out of town that week and has not received any documentary evidence from the landlord as of the date of this hearing. The landlord stated that he had proof of service for the documentary evidence, but did not submit it for the hearing. The material submitted by the landlords consisted of:

- A copy of the 10 Day Notice dated July 21, 2015
- A copy of a proof of service document for the 10 Day Notice dated July 21, 2015
- A copy of a signed tenancy agreement dated August 21, 2014
- A copy of a Monetary Order worksheet dated September 21, 2015
- A copy of a letter of written submission by the landlord dated September 20, 2015
- A copy of a letter dated June 4, 2015 from the landlords' Strata
- A printout of the landlords' online banking statement
- A printout of an email chain between both parties from July 2, 2015 to August 17, 2015.

During discussions with both parties, the contents of the documentary evidence were described in detail to the tenant. The tenant did not object to the submissions of:

- A duplicate copy of the 10 Day Notice dated July 21, 2015
- A copy of a proof of service document for the 10 Day Notice dated July 21, 2015
- A copy of a signed tenancy agreement dated August 21, 2014
- A copy of a Monetary Order worksheet dated September 21, 2015.

As such, these documents are admitted for the purposes of this hearing.

The tenant objected to:

- A copy of a letter of written submission by the landlord dated September 20, 2015
- A copy of a letter dated June 4, 2015 from the landlords' Strata
- A printout of the landlords' online banking statement
- A printout of an email chain between both parties from July 2, 2015 to August 17, 2015.

The landlords have failed to provide sufficient evidence to satisfy me that the tenant was properly served with the submitted documentary evidence. I also find that this documentary evidence is highly prejudicial to the tenant and exclude these documents from the hearing.

#### Issue(s) to be Decided

Are the landlord's entitled to an order of possession for unpaid rent?

Are the landlord's entitled to a monetary order for unpaid rent and recovery of their filing fee?

Is the tenant entitled to an order cancelling the 10 Day Notice?

Is the tenant entitled to an order to recover his filing fee?

### Background and Evidence

This tenancy began on August 21, 2014 on a fixed term tenancy ending on August 31, 2015. The monthly rent is \$1,700.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$850.00 was paid on August 21, 2014.

The landlord seeks an order of possession and a monetary order for unpaid rent which consists of the following.

<b>Item</b>	<b>Amount</b>
Unpaid Rent- July	\$1,700.00
Unpaid Rent- August	1,700.00
Unpaid Rent- September	1,700.00
Unpaid Rent- October	1,700.00
Total Unpaid Rent	\$6,800.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$6,850.00</b>

Both parties confirmed that the landlord served the tenant with a 10 Day Notice dated July 21, 2015 by posting it to the rental unit door on July 21, 2015. The landlords have also submitted a proof of service document that shows that the 10 Day Notice was posted on July 21, 2015 with a witness as confirmation. The 10 Day Notice indicates that the tenant failed to pay rent of \$1,700.00 that was due on July 1, 2015 and that there is a displayed effective end of tenancy date of July 31, 2015.

The landlord stated that since this notice was served that the tenant has failed to pay any rent and is still occupying the rental premises as of the date of this hearing. The tenant disputes this stating that he paid the July 2015 rent before it was due and has also subsequently paid the rent for August, September and October. The tenant states that he travelled to the landlords' residence and paid him the rent in cash. The landlord disputes this stating that the normal process of paying rent was always for the tenant to deposit the monthly rent into the landlords' bank account directly and that following this, the tenant would notify the landlord of the deposit. The tenant stated that he takes out \$5,000.00 in cash each month to pay all of his bills and that he paid the monthly rent in cash by personally attending the landlords' residence.

### Analysis

Pursuant to section 46 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 tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Both parties have confirmed that the landlords served the tenant with the 10 Day Notice dated July 21, 2015 by posting it to the rental unit door, I am satisfied that the 10 Day Notice was properly served. This is confirmed by the tenant's evidence that he received the package on July 22, 2015 and that he was able to subsequently file an application for dispute resolution to dispute the notice on July 24, 2015.

The landlord testified that the tenant failed to pay rent for July 2015 and any subsequent rent until the date of this hearing. The tenant disputes these claims and stated that he paid the July rent prior to it being due, but did not provide any evidence in support of these claims that he paid the rent in cash at the landlords' residence as opposed to the landlords' claims that the tenant directly deposited the monthly rent into his bank account.

I find, on a balance of probabilities, the tenant did not pay or attempt to pay his rent when it was due or within the five days provided for pursuant to section 46. The tenant did not provide sufficient evidence that would indicate that rent was paid.

As the tenant has failed to pay his rent in full when due, I find that the 10 Day Notice issued July 21 2015 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlords are entitled to possession of the rental unit on July 31 2015, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

I find that the landlords have proven that the tenant failed to pay monthly rent of \$1,700.00 for July, August, September and October of 2015 and that they are entitled to those amounts totalling, \$6,800.00.

The landlords' application also mentions late rent payment fees, but the landlord has not provided any further details to this claim nor any evidence to support this claim of entitlement. As such, this portion of the application is dismissed without leave to reapply.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed. The 10 Day Notice dated July 21, 2015 is upheld. The landlords' application for an order of possession is granted.

I issue a monetary order in the landlord's favour in the amount of \$1,735.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid Rent- July	\$1,700.00
Unpaid Rent- August	1,700.00
Unpaid Rent- September	1,700.00
Unpaid Rent- October	1,700.00
Total Unpaid Rent	\$6,800.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$6,850.00</b>

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) 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: October 02, 2015

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**Residential Tenancy Branch**

