



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR OPR CNR

### **Introduction:**

Both parties made Applications. The tenant was not present at the hearing and the landlord provided sworn evidence of service of the Notice to End the Tenancy for non-payment of rent dated September 2, 2015 to be effective September 12, 2015 and of the Application by registered mail (which was verified online as successfully delivered).

**Issues:** Has the landlord proved on the balance of probabilities that there is unpaid rent and they are entitled to an Order of Possession and a Monetary Order for rental arrears pursuant to sections 46 and 55 of the Act? Or is the tenant entitled to any relief?

### **Background and Evidence:**

The tenant did not attend the hearing. The landlord attended and was given opportunity to be heard, to provide evidence and to make submissions. The tenancy began on June 15, 2015 on a fixed term lease to expire on June 15, 2016. Rent is \$1600 a month and the tenant paid a security deposit amounting of \$800. The tenant failed to pay the rent for July, August, September and October 2015 totalling \$6400. In addition, the lease obligates the tenant to pay 2/3 of utilities the landlord provided utility bills as evidence that the tenant had not paid these utilities of \$130 for June and July, \$58.48 for August, \$62.76 for September and \$55.61 for October 2015 (totalling \$306.85). The landlord has not yet received the November bill and the tenant has not given vacant possession of the unit. The landlord requests an Order for Possession effective two days from service.

The tenant stated in his application that the landlord would not accept rent and encouraged the downstairs tenants to make unnecessary noise. The landlord provided many copies of calls and emails to the tenant requesting rent and email messages from the tenant where he says he will have to leave at the end of August because one son is not paying rent but also including one on August 21, 2015 where the tenant is demanding free rent because he says the landlord is breaking the lease by evicting him.

### **Analysis:**

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Although the

tenant disputed the Notice in time, he did not attend to support his Application and none of his written complaints constitute valid reasons to withhold his rent. Pursuant to section 26 of the Act, a tenant must pay his rent on time whether or not the landlord is fulfilling his obligations under the Act. I therefore dismiss his application to cancel the Notice to End the Tenancy. Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. The landlord has made this request at the hearing and also filed his own Application for an Order of Possession. As a result I grant the landlord an Order for Possession effective two days from service.

I find the landlord entitled to recover \$6,400 for unpaid rent to November 15, 2015 and \$306.85 for unpaid utilities to October 2015. I give him leave to reapply for further amounts owed after the tenant vacates.

### **Conclusion:**

I granted the landlord an Order for Possession effective two days from service. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant's application without recovery of the filing fee.

I find the landlord entitled to a monetary order as calculated below. I find him entitled to retain the security deposit to offset the amount owing and to recover the \$100 filing fee for this application. I give him leave to reapply for further amounts owed within the legislated time limits.

Calculation of Monetary Order:

Rent arrears and loss	6400.00
Utilities owed based on 2/3 utilities to Oct. 2015	306.86
Filing fee	100.00
Less security deposit (no interest)	-800.00
<b>Total Monetary Award to Landlord</b>	<b>6006.86</b>

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: November 10, 2015

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Residential Tenancy Branch

