



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied an order of possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued by the landlord, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The landlord and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the beginning of the hearing, neither party raised any issue regarding service of the evidence or application.

Thereafter, the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and for recovery of the filing fee paid for this application?

### Background and Evidence

The landlord stated that the tenancy began 10 years ago and the tenant stated the tenancy began on July 1, 2006. The undisputed evidence was that monthly rent was \$900.00, due on the first day of the month. Although there was a written tenancy agreement at one time, neither party produced a copy.

The landlord gave evidence that on November 18, 2015, he served the tenant with the Notice, by leaving it with the tenant, listing unpaid rent of \$900.00 as of November 1, 2015. The effective vacancy date listed on the Notice was November 30, 2015. Into evidence, the landlord submitted a copy of the Notice. The tenant confirmed this evidence.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant has not made any further rent payments and as of the date of the hearing, the tenant owed a rent deficiency of \$2700.00, the amount of his monetary claim.

The tenant acknowledged that he has not paid rent and does not intend on paying rent until a hearing on his own application for dispute resolution set to be heard in June 2016. In explanation, the tenant submitted that his rental unit, in the basement level, suffered a flood on November 7, 2015, not for the first time, and that he should not have to pay rent while the basement was under water.

The tenant repeatedly referred to his evidence; however, the tenant confirmed this evidence was filed with his application for dispute resolution and that he had not submitted evidence in response to the landlord's application.

The tenant was informed that his evidence was not before me for the hearing.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act. As the tenant has not submitted evidence under Sec. 33

of the Act that that he has incurred any expenses for emergency repairs, he has not met this criterion.

I find that the tenant owed rent for the month of November 2015, under the terms of the tenancy agreement, and did not pay.

When a tenant fails to pay rent due pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

As such, I find the landlord submitted sufficient evidence to prove that the tenant was served the Notice, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, November 30, 2015.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I also find that the landlord is entitled to a monetary award of \$2750.00, comprised of unpaid rent of \$900.00 for November 2015, and loss of rent revenue for December 2015 and January 2016 of \$900.00 each, as the tenant has over held in the rental unit beyond the effective end of tenancy of November 30, 2015, and the \$50.00 filing fee paid by the landlord for this application.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of his monetary award, in the amount of \$2750.00, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord's application for an order of possession and a monetary order for unpaid rent has been granted.

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: January 8, 2016

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Residential Tenancy Branch

