



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF (Landlord's Application)  
                             CNR, ERP, RP, LRE, RR (Tenant's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord on February 11, 2016 and by the Tenant on February 5, 2016.

The Landlord applied for an Order of Possession and a Monetary Order for: unpaid rent; money owed or compensation for loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee from the Tenant. The Tenant applied to cancel the notice to end tenancy, for the Landlord to make emergency repairs and regular repairs to the rental unit, to suspend or set conditions on the Landlord's right to enter the rental unit, and to allow the Tenant to reduce rent.

### Preliminary Issues

The Landlord appeared for the hearing and was assisted by her daughter who acted as the Landlord's advocate; they both provided affirmed testimony during the hearing. The Landlord also provided a copy of the notice to end tenancy and the tenancy agreement into written evidence prior to the hearing. However, there was no appearance for the Tenant despite the line being left open for ten minutes while the hearing took place.

I noted that the Tenant had been given the same date, time, and conference call hearing codes to hear her Application at the same time as the Landlord's Application. The Landlord confirmed receipt of the Tenant's Application and testified that she had served her Application to the Tenant by registered mail on February 11, 2016. The Landlord provided the Canada Post tracking number into oral evidence to verify this method of service. This number is documented on the front page of this decision. Based on the foregoing, I find that the Landlord served her documents for this hearing pursuant to Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Landlord which I have carefully considered as follows.

As the Tenant failed to appear for the hearing and present the merits of her Application, and the Landlord appeared and was ready to respond to the Tenant's claims, I dismissed the Tenant's Application without leave to re-apply.

The Landlord's advocate explained that since the time the Landlord made the Application, the Tenant has also failed to pay rent for March 2016 which now increases the monetary claim for unpaid rent to \$6,815.00. Section 64(3) (c) of the Act allows an Application to be amended. In addition, Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* states:

*"In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.*

*If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served."*

[Reproduced as written]

Based on the foregoing, I amended the Landlord's Application to consider her monetary claim for the amount of \$6,815 for unpaid rent.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

#### Background and Evidence

The Landlord's advocate testified that this tenancy began on April 1, 2015 on a month to month basis. Monthly rent is payable under the written tenancy agreement in the amount of \$2,000.00 due on the first day of each month. No security deposit was requested of the Tenant at the start of this tenancy.

The Landlord's advocate testified that by the end of December 2015, the Tenant was in rental arrears in the amount of \$2,015.00. The Tenant failed to pay rent on January 1, 2016, bringing the rental arrears to a total of \$4,015.00. The Landlord testified that the Tenant had put a stop payment on rent being provided by a third party government agency, but the Landlord did receive a cheque by the agency of \$400.00 towards January 2016 rent.

The Landlord's advocate testified that the Tenant failed to pay rent for February 2016. However, the Landlord again received a cheque by the third party government agency towards February 2016 rent in the amount of \$800.00. This resulted in a balance of \$4,815.00 for unpaid rent.

The Landlord testified that as a result, she prepared a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") for this amount dated February 1, 2016. The Notice shows a vacancy date of February 10, 2016 due to \$4,815.00 in unpaid rent. The Landlord testified that she served the Notice, which she had prepared on February 1, 2016, by personally giving it to the Tenant on February 2, 2016.

In addition, the Tenant failed to pay rent for March 2016. This results in a total balance of rental arrears of \$6,815.00 which the Landlord now seeks to recover from the Tenant and end the tenancy for unpaid rent.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement **whether or not** the landlord complies with the Act. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice, I find that the contents complied with the requirements of Section 52 of the Act. I also accept the undisputed evidence that the Tenant was personally served with Notice on February 2, 2016. Therefore, pursuant to Section 53 of the Act, I correct the vacancy date on the Notice to February 11, 2016.

While the Tenant did make an Application within the allowable time limits to dispute the Notice, the Tenant failed to appear for the hearing to dispute the Landlord's testimony and provide evidence as to why the rent was not paid. I also note that the Tenant provided written and photographic evidence one day prior to this hearing. This evidence was neither before me or the Landlord for this hearing and would not have been considered because it had not been served within the time limits stipulated by the *Residential Tenancy Branch Rules of Procedure*.

As the Tenant's Application has been dismissed, I accept the undisputed testimony and written evidence before me that the Tenant has failed to pay rent for this tenancy in the amount of \$6,815.00 claimed. As the effective date of the Notice has now passed and

the Tenant is still occupying the rental unit, the Landlord is also entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee for the cost of the Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$6,915.00. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court. Copies of both orders are attached to the Landlord's copy of this decision

### Conclusion

The Tenant has breached the Act by not paying rent due under the tenancy agreement. Therefore, I grant the Landlord an Order of Possession effective two days after service on the Tenant. The Landlord is also granted a Monetary Order in the amount of \$6,915.00 which includes the recovery of the filing fee. The Tenant's Application is dismissed in its entirety without leave to re-apply.

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: March 23, 2016

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Residential Tenancy Branch

