



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security deposit and to recover the filing fee from the Tenant. The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance by the Tenant during the ten minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord testified that he served the Tenant personally with a copy of the Application and the Notice of Hearing documents with a witness. Based on the undisputed evidence before me, I find the Landlord served the Tenant with the required documents for this hearing in accordance with Section 89(1) (a) of the *Residential Tenancy Act* (the "Act"). The hearing continued to hear the undisputed evidence of the Landlord.

### 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?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

### Background and Evidence

The Landlord testified that this tenancy was an oral agreement which started in June 2015 on a month to month basis. Rent is payable by the Tenant in the amount of \$650.00 on the first day of each month. The Tenant paid the Landlord a security deposit of \$300.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that by the end of December 2015 the Tenant was in rental arrears of \$1,050.00. The Tenant then failed to pay rent for January and February 2016. As a result, the Landlord personally served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on February 17, 2016.

The Notice was provided into written evidence and shows an expected date of vacancy of February 27, 2016 due to \$2,350.00 in unpaid rent due on February 1, 2016.

The Landlord testified that the Tenant has not disputed the Notice and still continues to occupy the rental unit. In addition, the Tenant has also failed to pay rent for March and April 2016. As a result, the Landlord now seeks to recover unpaid rent in the amount of \$3,650.00 as well as an Order of Possession to end the tenancy.

### Analysis

The Act defines a "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find the Landlord and Tenant engaged into a month to month tenancy which started in June 2015 as detailed above.

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 on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed oral evidence that the Notice was served to the Tenant personally on February 17, 2016. Therefore, the Tenant had until February 22, 2016 to pay the outstanding rent or make an Application to dispute the Notice. There is no evidence before me that the Tenant did either or has vacated the rental unit by the vacancy date detailed on the Notice.

As a result, I find that the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice. As this date has now passed and the

Tenant is still residing in the rental unit without paying rent, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court.

I find the Landlord is also entitled to unpaid rent in the amount of \$3,650.00 claimed. As the Landlord has been successful in this matter, the Landlord is also entitled to recover the \$100.00 Application filing fee pursuant to Section 72(1) of the Act.

Therefore, the total amount payable by the Tenant to the Landlord is \$3,750.00. As the Landlord already holds the Tenant's \$300.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is granted a Monetary Order for the remaining balance of \$3,450.00. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court. Copies of the above orders for service and enforcement are attached to the Landlord's copy of this decision.

### Conclusion

The Tenant has failed to pay rent pursuant to the Act and the tenancy agreement. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord is allowed to keep the Tenant's security deposit and is granted a Monetary Order for the remaining balance of \$3,450.00. 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: April 13, 2016

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Residential Tenancy Branch