



# 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 as a result of the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on May 9, 2016 (the "Application").

The Landlord seeks the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order of possession for unpaid rent; a monetary order for unpaid rent; a monetary order permitting the Landlord to keep all or part of the security deposit; and an order granting the Landlord recovery of the filing fee paid to bring the Application.

Each of the parties attended the hearing on their own behalf. Both provided their solemn affirmation and were given the opportunity to provide evidence orally and in documentary form.

The Landlord advised he served the Notice of a Dispute Resolution Hearing, dated May 11, 2016 (the "Notice"), including a 21-page documentary evidence package, by registered mail on May 12, 2016. Included with the Landlord's documentary evidence was a Canada Post registered mail receipt dated May 12, 2016.

The Tenant advised he was in China from April 22 to May 19, 2016, and provided a copy of his stamped passport in support. The Tenant acknowledged during the hearing that he received the Notice and evidence on May 19, 2016. I am satisfied the Tenant was duly served with the Notice on that date.

A summary of the parties' evidence, derived from the documentary evidence and affirmed testimony, is provided below. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
3. Should the Landlord be granted authority to retain all or part of the security deposit?
4. Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The parties agree that although the Landlord purchased the property in March 2016, the tenancy began in April 2015. The oral tenancy agreement in place when the Landlord purchased the property continued. The Tenant rents a bedroom and storage space at the rental property, and shares bathroom and kitchen facilities with other occupants.

The parties further agree that rent is due in the amount of \$300.00 per month. The Landlord says rent is fixed and payable on the first day of each month.

The Tenant, on the other hand, says the oral tenancy agreement required him to pay pro-rated rent, calculated from time to time, depending on whether or not he was occupying the rental unit or travelling.

The Landlord provided oral and documentary evidence that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 2, 2016 (the "10 Day Notice"), was served on that date by attaching a copy to the door of the Tenant's rental unit.

As noted above, however, the Tenant has provided oral and documentary evidence that he was out of the country from April 22 to May 19, 2016, which was when he received the Notice and the 10 Day Notice.

The Tenant also provided oral and documentary evidence that he paid \$300.00 to the Landlord on May 21, 2016, two days after receipt of the 10 Day Notice. The Tenant provided a copy of a receipt signed by the Landlord in support.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on the balance of probabilities, I find the following:

Section 46 of the *Act* requires a tenant, on receipt of a notice to end tenancy, to pay the overdue rent, in which case the notice has no effect, or to dispute the notice. Failure to do either of these within five days of receipt of the notice leads to the conclusive presumption that the tenant has accepted the end of the tenancy.

The Landlord served the 10 Day Notice on May 2, 2015, by attaching it to the door of the Tenant's rental unit. However, the Tenant did not receive it until May 19, 2016, when he returned from a trip to China. Given the uncertainty regarding the terms of the tenancy agreement, I find the Tenant was duly served with the 10 Day Notice on May 19, 2016.

Two days later, on May 21, 2016, the Tenant paid rent for May 2016 in full, as required by section 46 of the *Act*.

As the Tenant has paid rent in accordance with section 46 of the *Act*, the 10 Day Notice has no effect. The Landlord's application is dismissed and the tenancy continues.

**The parties are strongly encouraged to negotiate a written tenancy agreement to avoid similar disputes in the future. The Residential Tenancy Branch website (<http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>) contains information and forms for use by both landlords and tenants, and Information Officers are available to answer any questions the parties may have.**

#### Conclusion

The Landlord's application is dismissed.

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: June 09, 2016

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Residential Tenancy Branch