



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on June 21, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with the Application for Dispute Resolution were sent to the Tenant at the rental unit, via registered mail. The Landlord submitted Canada Post documentation that corroborates this testimony. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent; and to keep all or part of the security deposit?

### Background and Evidence

The Landlord stated that:

- this tenancy began on April 01, 2016, although the Tenant was permitted to move in a few days prior to the official start date;
- the Tenant agreed to pay monthly rent of \$1,050.00 by the first day of each month;
- the Tenant paid a security deposit of \$525.00;
- the Tenant paid \$300.00 in rent on May 07, 2016;
- the Tenant has not paid any other rent for May, June, or July of 2016;
- on June 13, 2016 he gave the Tenant a letter, a copy of which was submitted in evidence; the letter declared that the Tenant must vacate the rental unit by June 23, 2016 due to unpaid rent; and

- in the event the tenancy is continuing he does not want to apply the security deposit to unpaid rent.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,050.00 by the first day of each month and that the Tenant still owes \$2,850.00 in rent for the period ending July 31, 2016. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,850.00 in outstanding rent to the Landlord.

Section 46(1) of the *Act* entitles landlords to end the tenancy within ten days if rent is not paid when it is due, by providing proper written notice. On the basis of the undisputed evidence, I find that on June 13, 2016 the Landlord gave the Tenant a letter which declared that she must vacate the rental unit by June 23, 2016.

Section 46(2) of the *Act* stipulates that a notice to end tenancy served under this section must comply with section 52 of the *Act*. Section 52(e) of the *Act* stipulates that to be effective the notice to end tenancy served by a landlord must be in the approved form. The approved form for ending a tenancy pursuant to section 46(2) of the *Act* is a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities (RTB-30). I find that the letter served to the Tenant on June 23, 2016 does not serve as proper notice to end the tenancy because it was not served in the approved form.

As the Landlord did not serve the Tenant with notice to end the tenancy pursuant to section 26 of the *Act* in the approved form, I find that he has not established grounds to end this tenancy pursuant to section 26 of the *Act*. I therefore dismiss the Landlord's application for an Order of Possession.

In adjudicating this matter I have considered section 10(2) of the *Act*, which stipulates that a deviation from an approved form does not invalidate the form used providing it does not affect the substance of the approved form. I find that letter served to the Tenant on June 23, 2016 is missing highly relevant information that is contained on a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, such as the fact a tenant has the right to dispute the Notice to End Tenancy or pay the overdue rent within five days of receiving the Notice. I find that this missing information is highly relevant and I do not accept the letter as proper notice to end the tenancy.

As the Landlord has indicated that he wishes to retain the security deposit in the event the tenancy is continuing, and I have determined that the Landlord does not yet have the right to end this tenancy pursuant to section 46 of the *Act*, I consider the Landlord's application to retain the security deposit to be withdrawn.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,950.00, which is comprised of \$2,850.00 in unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$2,950.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Landlord's application for an Order of Possession has been dismissed. The Landlord retains the right to serve the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent if any rent remains unpaid, including rent due prior to July 31, 2016.

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: July 29, 2016

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Residential Tenancy Branch