



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, CNR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package filed by the other party. Both parties confirmed receipt of the submitted documentary evidence filed by the other party. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served and are deemed served as per section 90 of the Act.

### 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 tenant entitled to an order cancelling the 10 Day Notice?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on September 1, 2015 on a fixed term tenancy ending on September 1, 2016 as per the signed tenancy agreement dated August 11, 2015. The monthly rent is \$1,500.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$650.00 was paid.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$4,500.00.

The landlord provided affirmed testimony that the tenant was served with the 10 Day Notice dated July 10, 2016 by placing it in the tenant's mailbox. The tenant confirmed receipt of the 10 Day Notice from the mailbox on July 14, 2016. The 10 Day Notice states that the tenant failed to pay rent of \$1,500.00 that was due on July 1, 2016.

Both parties were cautioned that as the tenant received the 10 Day Notice dated July 10, 2016 in the mailbox on July 14, 2016 that the effective end of tenancy date would be corrected to July 24, 2016.

The landlord claims that the tenant failed to pay rent of \$1,500.00 for July 2016 and has since not paid any rent for August and September of 2016. The tenant confirmed in her direct testimony that she had only paid \$1,000.00 for July 2016 and that no rent has been paid since as of the date of this hearing. The landlord disputed that \$1,000.00 was paid for July 2016. The tenant stated that she had no proof of a rent payment.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed testimony of both parties and find that the tenant failed to pay rent of \$1,500.00 that was owed for July 1, 2016. The tenant provided undisputed affirmed testimony that she did not pay all of the rent owed. The tenant did not file an application for dispute within the allowed timeframe.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by the corrected date of July 24, 2016. As that has not

occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

As for the monetary claim, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The landlord has claimed that the tenant has failed to pay rent totalling, \$4,500.00 for July, August and September at \$1,500.00 per month. The tenant has provided affirmed testimony that she paid \$1,000.00 for July and no other rent payments were made since as of the date of the hearing. The landlord dispute that any payments were made. The tenant is unable to provide any evidence to support her claim that a \$1,000.00 rent payment was made. I find based upon this that the landlord has established a claim for \$4,500.00 in unpaid rent. The landlord is granted a monetary order for \$4,500.00. This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted an order of possession for unpaid rent.

The landlord is granted a monetary order of \$4,500.00 for unpaid rent.

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: September 07, 2016

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Residential Tenancy Branch