



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes:      OPR, MNR (Landlord's Application)  
                                 CNR, MT (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 Tenant on July 19, 2016 and an Application for Direct Request made by the Landlord on July 28, 2016.

The Landlord applied for an Order of Possession through the Direct Request proceedings based on an undisputed notice to end tenancy for unpaid rent. However, the Tenant applied to dispute the notice to end tenancy and the Landlord's Application was directed to be heard with the Tenant's Application in this participatory hearing. The Tenant also applied for more time to cancel the notice to end tenancy.

### Preliminary Issues

The Landlord appeared for the hearing with his son who acted as his agent and provided affirmed testimony during the hearing as well as documentary evidence prior to the hearing. However, there was no appearance for the Tenant during the 25 minute hearing despite the fact that the Tenant's Application was also set to be heard in this hearing. Therefore, I turned my mind to the service of the Landlord's Application.

The Landlord testified that he served the Tenant personally with his Application on July 29, 2016. The Landlord's agent testified that the Landlord received a text message from the Tenant during the morning of this hearing which was purportedly written by the Tenant's daughter explaining that the Tenant was not going to be able to appear for this hearing. The Landlord's agent submitted that this could not be true because the Landlord testified that he had spoken to the daughter during the morning of this hearing who denied sending this text message. Based on the undisputed oral testimony of the Landlord, I find the Tenant was served pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The hearing continued to hear the undisputed evidence of the Landlord and his agent.

The Landlord's agent explained that the Landlord wanted to claim for: unpaid rent up to the date of this hearing; the Tenant's security deposit in lieu of the unpaid rent; and the filing fee, as these portions were prohibited in the Direct Request process which the Landlord was unable to proceed through. Pursuant to my authority under Section 64(3) (c) of the Act and Rule 4.2 of the Rules of Procedure, I amended the Landlord's Application to include these requests.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent for July, August, and September 2016?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim?

#### Background and Evidence

The Landlord's agent testified that this tenancy started on December 1, 2012 on a month to month basis. A written tenancy agreement was completed which established rent was payable by the Tenant in the amount of \$800.00 on the first day of each month. The Landlord testified that the Tenant currently pays \$900.00 in rent per month. The Tenant paid a security deposit of \$400.00 at the start of the tenancy which the Landlord still retains.

The Landlord's agent testified that the Tenant is habitually late paying rent. The Tenant failed to pay rent on July 1, 2016 in the amount of \$900.00. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it to the Tenant's door on July 11, 2016. The Landlord provided a Proof of Service document which was signed by a witness who verified this method of service.

The Notice was provided into evidence and shows a vacancy date of July 24, 2016 due to \$900.00 in unpaid rent. The Landlord's agent testified that the Tenant has also failed to pay rent for August and September 2016. However, the Tenant did make a partial payment of \$500.00 in mid-August, 2016. Therefore, the current balance of outstanding rent which the Landlord now seeks to recover from the Tenant is \$2,200.00, as well as an Order of Possession to end the tenancy.

#### Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement. 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 must vacate the rental unit on the vacancy date of the Notice.

Having examined the copy of the Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the Notice was served to the Tenant by attaching it to the rental unit door on July 11, 2016 in accordance with Section 88(g) of the Act.

The Tenant confirms in her Application that the Notice was received on July 11, 2016. As explained and outlined in the Notice, the Tenant would therefore have had until July 16, 2016 to pay the outstanding rent on the Notice or make an Application to dispute the Notice. However, the Tenant did not make the Application until July 19, 2016.

Although the Tenant did apply for more time to cancel the Notice, the Tenant failed to appear for the hearing to prove that she had grounds to apply outside of the five day time limit afforded to the Tenant by Section 46(4) of the Act. Therefore, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice. As the vacancy date on the Notice has now passed and the Tenant is in rental arrears, 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 can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

The Landlord is also awarded the unpaid rent to date in the amount of **\$2,200.00**. As the Landlord has been successful in this hearing, the Landlord is also entitled to recover the **\$100.00** filing fee pursuant to Section 72(1) of the Act for the cost of having to make the Application. Therefore, the total amount payable by the Tenant to the Landlord is **\$2,300.00**.

As the Landlord already holds the Tenant's **\$400.00** 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. The Landlord is issued with a Monetary Order for the outstanding balance of **\$1,900.00**. This order must be served on the Tenant and may then be filed in the Small Claims Court and enforced as an order of that court.

Copies of the above orders are attached to the Landlord's copy of this Decision. The Tenant may be liable for the costs associated with having to enforce these orders.

Conclusion

The Tenant has breached the Act by not paying rent. The Landlord is granted a two day Order of Possession. The Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the outstanding balance of rent and the filing fee in the amount of \$1,900.00. The Tenant's Application is dismissed in its entirety **without** leave to re-apply as the Tenant failed to appear for the hearing.

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 12, 2016

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Residential Tenancy Branch