



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlord and the landlord's agent.

The landlord's agent testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on August 29, 2016 in accordance with Section 89 and that this service was witnessed by a third party.

Based on the testimony of the landlord's agent, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

I also note that on September 8, 2016 the landlords submitted an Amendment to an Application for Dispute Resolution indicating they had also issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent and sought an order of possession based on that Notice as well.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause and/or unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted that they recently purchased the property and took possession on May 13, 2016 but that they are not aware of when the tenancy began some time prior to their ownership. The landlord stated the tenancy is on a month to month basis for the monthly rent of \$650.00 due on the 1<sup>st</sup> of each month.

The landlord testified the tenant has failed to pay rent since they have taken possession of the property and owes rent for the months of June, July, August, September, and October 2016 for total amount of \$3,250.00 in arrears.

The landlord submitted into evidence the following relevant documents:

- A copy of a 1 Month Notice to End Tenancy for Cause issued on June 30, 2016 with an effective vacancy date of July 30, 2016 citing an unreasonable number of occupants; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on September 8, 2016 with an effective vacancy date of September 7, 2016 due to \$1,950.00 in unpaid rent.

The landlord testified the 1 Month Notice was served to the tenant on June 30, 2016 in person and that the service was witnessed by a third party.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit. Section 47(2) states that a notice given under Section 47 must end the tenancy on a date that is not earlier than 1 month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement.

Section 47(4) allows a tenant who receives a notice under Section 47 to apply to dispute the notice within 10 days of receiving it. Section 47(5) states that if a tenant does not file an Application for Dispute Resolution seeking to cancel such a notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice.

I accept the landlord's undisputed testimony and evidence that the tenant was served with the 1 Month Notice on June 30, 2016. As there is no evidence before me that the tenant had filed an Application for Dispute Resolution seeking to cancel the 1 Month Notice I find the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit.

Section 53 of the *Act* allows that if a landlord or tenant gives notice to end a tenancy effective on a date that is earlier than the earliest date permitted under the applicable section of the *Act*, the effective date is deemed to be the earliest date that complies with the relevant section. In this case, the effective date identified on the 1 Month Notice was July 30, 2016. However as rent is due on the 1<sup>st</sup> of each month I find the actual effective date is amended to July 31, 2016.

As I have determined the 1 Month Notice is effective and the tenancy ended as of July 31, 2016, I find there is no need to determine the effectiveness of the 10 Day Notice.

In addition, I find based on the landlord's undisputed testimony the tenant has failed to pay rent in the amount claimed.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$3,350.00** comprised of \$3,250.00 rent owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: October 19, 2016

---

Residential Tenancy Branch