



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, OPC, MND, MNR, MNSD, MNDC, FF, O  
CNC, CNR, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord and the Tenant.

The Landlord applied on September 12, 2016 for an Order of Possession for cause and unpaid rent, and for a Monetary Order for: unpaid rent; damage to the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenant’s security deposit; to recover the filing fee from the Tenant; and for “Other” issues.

The Tenant applied on September 2, 2016 to: cancel the notice to end tenancy for cause; for the cost of emergency repairs; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the return of the Tenant’s security deposit; and to recover the filing fee from the Landlord. The Tenant amended his Application on September 9, 2016 to dispute a notice to end tenancy for unpaid rent.

### Preliminary Issues

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence prior to the hearing. There was no appearance for the Tenant despite the Tenant’s Application being scheduled for the same time as the Landlord’s Application. As there was no appearance for the Tenant during the 15 minute hearing, I dismissed the Tenant’s Application without leave to re-apply.

I then turned my mind to the service of documents by the Landlord. The Landlord testified that the Tenant was served with a copy of the Application and the Notice of Hearing documents to the rental unit address on September 15, 2016 by registered mail. The Landlord provided the Canada Post tracking number into evidence to verify this method of service. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a

failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the required documents on September 20, 2016 pursuant to the Act.

At the start of the hearing, the Landlord explained that her monetary claim disclosed in the Application was for unpaid rent for September 2016. The Landlord's Application for "Other" issues was to do with potential damages to the rental unit that was likely to be caused by the Tenant. The Landlord did not provide any evidence to show damages to the rental unit because the tenancy had not ended. As a result, I allowed the Landlord to withdraw this portion of the monetary claim and provided leave to re-apply.

The Landlord stated that since making the Application, the Tenant has also failed to pay rent for October 2016 which now increases the monetary claim for unpaid rent to \$1,200.00. Section 64(3) (c) of the Act allows an Application to be amended. In addition, Rule 4.2 of the Residential Tenancy Branch Rules of Procedure states:

*"In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served."*

[Reproduced as written]

Based on the foregoing, I amended the Landlord's Application to consider her monetary claim for the amount of \$1,200.00 in unpaid rent.

#### 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?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim for unpaid rent?

#### Background and Evidence

The Landlord testified that this tenancy started on August 1, 2016 for a fixed term of one year due to expire on July 31, 2017. A written tenancy agreement was completed which established that rent is payable by the Tenant in the amount of \$600.00 on the first day of each month. The Tenant paid a security deposit of \$300.00 on July 30, 2016 which the Landlord still retains.

The Landlord testified that the Tenant was served with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on August 24, 2016. It was issued due to a

breach of a material term of the tenancy agreement, namely the Tenant's smoking at the rental unit which was contrary to the tenancy agreement.

The Landlord testified that on September 1, 2016 the Tenant then failed to pay rent. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") by posting it to the Tenant's door on September 2, 2016. The 10 Day Notice was provided into evidence and shows a vacancy date of September 12, 2016 due to unpaid rent of \$600.00 payable on September 1, 2016. The Landlord testified that the Tenant has also failed to pay rent for October 2016. As a result, the Landlord now seeks to recover \$1,200.00 in unpaid rent and an order to end the tenancy as the Tenant is still occupying the rental unit.

### Analysis

I first turn my mind to the 10 Day Notice. Having examined the copy of the 10 Day Notice, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's testimony that the 10 Day Notice was served to the Tenant by attaching it to the rental unit door on September 2, 2016 pursuant to Section 88(g) of the Act. I also find the Tenant received the 10 Day Notice as it was disputed by the Tenant on the September 9, 2016 pursuant to the amendment made by the Tenant to his Application.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a 10 Day Notice, a tenant must pay the overdue rent or make an Application to dispute it; if the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and must vacate the rental unit on the vacancy date. Although the Tenant filed his Application to dispute the 10 Day Notice within the time limit set by the Act, the Tenant failed to appear for the hearing to prove that he had grounds or authority to withhold rent for September and October 2016. The serving of a 1 Month Notice to a tenant is also not legal grounds to withhold rent under the Act.

Therefore, I am only able to conclude that pursuant to the Act, the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the 10 Day Notice. As the vacancy date on the 10 Day Notice has now passed and the Tenant is in rental arrears and continues to occupy the rental unit, 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. As the tenancy has been ended through the 10 Day Notice, I did not examine or make findings on the Landlord's 1 Month Notice as this is now a moot issue.

The Landlord is also awarded the unpaid rent for the months of September and October 2016 in the amount of \$1,200.00. As the Landlord has been successful in proving unpaid rent, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,300.00 (\$600.00 + \$600.00 + \$100.00).

As the Landlord already holds the Tenant's \$300.00 security deposit, pursuant to Section 72(2) (b) of the Act I order the Landlord to retain this amount in partial satisfaction of the claim awarded. The Landlord is issued with a Monetary Order for the outstanding balance of \$1,000.00 (\$1,300.00 - \$300.00). This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court. Copies of the above orders are attached to the Landlord's copy of this Decision.

### Conclusion

The Tenant 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 balance of unpaid rent and the filing fee of \$1,000.00. The Landlord's monetary claim for damages to the rental unit is dismissed with leave to re-apply. The Tenant's Application is dismissed **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 Act

Dated: October 27, 2016

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Residential Tenancy Branch