



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR MNR FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on September 26, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities; and
- a monetary order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf and provided his solemn affirmation. The Tenant did not attend the hearing.

The Landlord testified that a package containing the Application, Notice of a Dispute Resolution Hearing, and the Landlord's documentary evidence, was served on the Tenant by attaching a copy to the door of the rental unit on October 2, 2016. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to be received three days later. Accordingly, I find the Tenant is deemed to have received the documents referenced above on October 5, 2016. These documents were submitted to the Residential Tenancy Branch on October 14, 2016.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement between the parties with his documentary evidence. It confirms a month-to-month tenancy began on September 1, 2016. Rent is \$600.00 per month. The Landlord testified that rent is due on the first day of each month. The Tenant paid a security deposit of \$300.00, which the Landlord retains.

According to the Landlord, rent was not paid when due on September 1, 2016. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 17, 2016 (the "10 Day Notice"). The Landlord submitted a Proof of Service form confirming the 10 Day Notice was served on the Tenant by attaching a copy to the door of the Tenant's rental unit on September 17, 2016. However, the Landlord testified that when he and a witness, J.W., proceeded to attach the 10 Day Notice to the door, the Tenant opened the door and accepted it.

The Landlord testified that the Tenant has made one payment of \$600.00 since September 1, 2016, and that \$600.00 remains outstanding. The Tenant continues to occupy the rental unit.

### Analysis

Based on the unchallenged and affirmed oral testimony, the documentary evidence submitted by the Landlord, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. In this case, the Landlord testified, and I find, that the Tenant has not paid rent in full since September 1, 2016, and that \$600.00 remains outstanding. Accordingly, I am satisfied the Landlord has demonstrated an entitlement to an award of \$600.00 for unpaid rent.

When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. I find the Tenant was duly served with the 10 Day Notice, in person, on September 17, 2016. A tenant who receives a notice to end tenancy under section 46 and wishes to dispute it has five days to either pay rent or file an application for dispute resolution. When a tenant does not pay rent or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

The Tenant did not pay rent or file an application for dispute resolution in the applicable time period. Accordingly, the Tenant is conclusively presumed to have accepted the end of the tenancy. However, the Tenant continues to occupy the rental unit. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective one (1) day after service on the Tenant.

Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make this Application.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$700.00, which consists of \$600.00 in unpaid rent and \$100.00 in recovery of the filing fee.

### Conclusion

I grant the Landlord an order of possession, which will be effective one (1) day after service on the Tenant. This Order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I grant the Landlord a monetary order in the amount of \$700.00. This Order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 28, 2016

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Residential Tenancy Branch

