



# 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 dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) by the landlord for an order of possession for cause, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on September 21, 2016. The tenant provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the tenant and the rental unit address as the tenant continues to occupy the rental unit. For ease of reference, the registered mail tracking number has been included on the cover page of this decision. Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. The landlord testified that the registered mail package was returned as “unclaimed” which was confirmed by Canada Post. I find the tenant was duly served on the fifth day after mailing which would be September 26, 2016, in accordance with the *Act*. I note that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the *Act*.

### Preliminary and Procedural Matters

The landlord testified that in addition to the rent owed as claimed, the tenant continues to occupy the rental unit and the landlord has suffered a loss of rent up to and including October 2016. As a result, the landlord requested to recover his loss of rent up to the date of the hearing. I find this request does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application to \$3,500.00, which is comprised of \$500.00 in loss of rent for the months of April through to October 2016 inclusive, which is a seven months multiplied by \$500.00 per month.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

The landlord stated that a month to month tenancy began approximately four years ago when the tenant moved into the rental unit. The landlord confirmed that there is no written tenancy agreement. Monthly rent in the amount of \$500.00 was due on the first day of each month. The landlord testified that the tenant did not pay a security deposit or pet damage deposit.

The landlord confirmed service of the 1 Month Notice to End Tenancy for Cause dated July 11, 2016 (the "1 Month Notice"), by personally serving the tenant at the rental unit on July 11, 2016. The landlord stated that the tenant did not dispute the 1 Month Notice and continues to occupy the rental unit. The effective vacancy date listed on the 1 Month Notice is August 11, 2016.

The landlord's amended monetary claim is for \$3,500.00 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid April 2016 rent	\$500.00
2. Unpaid May 2016 rent	\$500.00
3. Unpaid June 2016 rent	\$500.00
4. Unpaid July 2016 rent	\$500.00

5. Unpaid August 2016 rent	\$500.00
6. Loss of September 2016 rent	\$500.00
7. Loss of October 2016 rent	\$500.00
<b>TOTAL</b>	<b>\$3,500.00</b>

The landlord testified that he has not received any rent for the months of April through to October 2016 inclusive and the tenant continues to occupy the rental unit.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** - I find there is no evidence before me that the tenant disputed the 1 Month Notice within 10 days after being served with the 1 Month Notice on July 11, 2016. The effective vacancy date of the 1 Month Notice is listed as August 11, 2016 which automatically corrects under section 53 of the *Act* to August 31, 2016 as rent is due on the first day of each month.

I find the tenant is conclusively presumed pursuant to section 47 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 1 Month Notice, which was August 31, 2016. The tenant continues to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant..

**Claim for unpaid rent and loss of rent** – Firstly, as the tenant was served and did not attend the hearing, I find the Application of the landlord is unopposed by the tenant. The landlord testified that \$3,500.00 in rent arrears and loss of rent is owed by the tenant as of the date of the hearing. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$3,500.00** comprised of rent arrears and loss of rent.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**.

**Monetary Order** – I find that the landlord has established a total monetary claim of **\$3,600.00** as described above and is entitled to a monetary order pursuant to section 67 of the *Act* in that amount.

**I caution** the landlord to comply with section 13 of the *Act* in future by ensuring all future tenancy agreements are in writing.

### Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. The order of possession must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$3,600.00 as indicated above. The landlord is granted a monetary order under section 67 of the *Act* in that amount. The monetary order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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