



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute codes      OPR CNR MNR MNDC FF

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* for Orders as follows:

Landlord:

- an order of possession for failure to pay rent and pursuant to section 55;
- a monetary order for unpaid rent and compensation for loss pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant stated he did not receive the landlord's application for dispute resolution.

The landlord testified that on September 23, 2016, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail tracking number in support of service which indicates the item was returned to the sender as unclaimed. The tenant acknowledged receiving the notice card to pick up the mail item but stated it was too late as the item had been returned by the time he attempted to pick it up.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded on the merits of both applications.

### Issues

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenancy began on September 1, 2016 with a monthly rent of \$1800.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$900.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on September 8, 2016 the tenant was personally served with the 10 day Notice to End Tenancy for unpaid rent. The landlord testified that the tenant did not pay the outstanding amount of rent as indicated in the Notice within five days of service of the Notice.

The tenant acknowledged service of the 10 day Notice and that he did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenant states that due to his car being stolen and a problem with his bank account his rent cheque was not cleared by his bank. The tenant testified that he attempted to pay the rent by cash or e-transfer but the landlord refused to accept the payment or provide an e-mail address.

The landlord's monetary claim is for outstanding rent in the amount of \$5400.00. The landlord testified that this includes unpaid rent for the months of September and October 2016 and loss of revenue for the month of November 2016.

### Analysis

I am satisfied that the tenant was personally served with the 10 day Notice to End Tenancy on September 8, 2016 pursuant to section 88 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the

arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant acknowledged rent was not paid within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent. I dismiss the tenant's argument that he attempted to pay the rent but was not able to do so as the landlord refused to accept payment. The 10 Day Notice to End Tenancy served on the tenant provides for an address for service of the landlord which the tenant utilized in filing his dispute application with the 5 days permitted under the Act. If the landlord was refusing to accept payment as alleged, the tenant could have delivered the rent payment to this address.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

I find that the tenant was obligated to pay monthly rent in the amount of \$1800.00 but failed to pay rent for the months of September and October 2016. I also accept the landlord's claim for loss of revenue for November 2016 as the tenant had still not vacated the rental unit or paid rent for this month as of the hearing date. I accept the landlord's claim for outstanding rent and loss of revenue in total of \$5400.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$5500.00.

Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the \$900.00 security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$4600.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4600.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: November 02, 2016

---

Residential Tenancy Branch