



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNDC, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an order of possession for unpaid rent, a monetary order for unpaid rent, compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed and to present affirmed oral testimony I have considered all of the evidence and testimony provided.

### Preliminary Matters

The landlord has claimed compensation for costs related to cable television service. Section 2.3 of the Rules of Procedure was applied:

#### ***2.3 Related issues***

*Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.*

As cable television costs are not related to the payment of rent and a potential end of tenancy I find that this portion of the claim is dismissed with leave to reapply.

### Issue(s) to be Decided

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

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

### Background and Evidence

The tenancy originally commenced five years ago. The parties confirmed that rent is currently \$475.00 due on the first day of each month. The landlord said that in March 2015 they signed a three month fixed term tenancy that ended in May 2015. The rent was then increased by \$10.00 to the current rate. The landlord is holding a security deposit in the sum of \$225.00.

The tenant confirmed receipt of a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of September 15, 2016. The tenant could not recall the date the Notice was received but said it was likely on September 5, 2016; the date the landlord stated the Notice was personally served.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$635.00 rent and \$174.00 utilities within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

During the hearing it was explained that television costs do not qualify as a utility and that those costs should not appear on a Notice ending tenancy.

The landlord has claimed unpaid rent for September, October and November 2016 in the sum of \$475.00 per month. The landlord said that the tenant also owes \$160.00 for August, 2016.

The landlord stated that since the Notice was issued two payments have been made by the tenant. One payment was made on September 16, 2016 in the sum of \$200.00 and another on November 5, 2016 in the sum of \$500.00. Receipts were issued to the tenant. The landlord said that up until June 2016 rent had been paid directly by a government ministry. Those cheques ceased.

The tenant said that he had talked to the landlord about rent overpayments that had been made throughout the tenancy in the sum of \$20.00 per month. Before the tenant went away in early October 2016 he and the landlord had agreed the tenant could make payments so he could catch up with the rent owed.

The landlord said he did not make any agreement with the tenant regarding repayment. The tenant is always late with rent and the landlord wants to end the tenancy.

When asked why he did not dispute the Notice ending tenancy the tenant could not provide any explanation except to say that prior to October 2016 he believed they had an agreement regarding rent payment.

### Analysis

In the absence of evidence to the contrary, I find that on September 5, 2016 the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on September 15, 2016, pursuant to section 46 of the Act. The landlord personally served the tenant on September 5, 2016; this was not disputed by the tenant.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant did not dispute the Notice and did not pay any rent until September 16, 2016. The tenant was required to pay all rent owed within five days of September 5, 2016.

Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; September 15, 2016. The tenant was entitled to dispute the Notice and to bring forward evidence in support of his claim that rent had been overpaid equivalent to that claimed as owed by the landlord. The tenant did not dispute the Notice and provided no evidence that the landlord had agreed to allow the tenant to make arrears payments. If the landlord had done so it would be expected that the tenant not leave rent unpaid for the balance of September and for October 2016. The \$500.00 paid on November 5, 2016 would have left \$25.00 to be applied to the balance of rent owed in September.

Therefore, in the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$250.00 in October and \$475.00 in September, 2016 and that the landlord is entitled to compensation in that amount. November 2016 rent has been paid.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord has been granted an order of possession that is effective two days after service to the tenant. This order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

Based on these determinations I grant the landlord a monetary order in the sum of \$825.00. In the event that the tenant does not comply with this order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

### Conclusion

The landlord is entitled to an order of possession and monetary Order for unpaid rent.

The claim for television service costs is dismissed with leave to reapply.

The landlord is entitled to filing fee costs.

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: November 16, 2016

---

Residential Tenancy Branch