



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 2, 2016 (the "10 Day Notice"), on that same date, by way of posting the 10 Day Notice to the rental unit door. The landlord testified that another agent of the landlord posted the 10 Day Notice with the landlord witnessing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on September 5, 2016, three days after its posting.

The landlord testified that the tenant was served with the landlord's application for dispute resolution by direct request on September 26, 2016, by posting to the rental unit door. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on September 29, 2016, three days after its posting.

The landlord testified that the Interim Decision of the Residential Tenancy Branch adjourning the Direct Request process to a participatory hearing was received on October 11, 2016. The landlord testified that the Interim Decision and Notice of Participatory Hearing was sent by registered mail to the tenant on that same date. The

landlord provided a Canada Post tracking number. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on October 16, 2016, five days after its mailing.

During the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that they wished to increase the monetary amount of the claim by \$81.00 which includes a \$25.00 late fee for the months of September, October and November as well as a \$3.00 rent shortfall on payment made in October and November. The landlord also requested to amend their application to seek the cost of filing fees. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim by \$81.00 to \$1,084.00. I also amend the landlord's Application to include a claim for the cost of filing fees.

#### Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation as claimed?

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

#### Background and Evidence

The landlord provided testimony regarding the following facts. This month-to-month tenancy began in July, 2015. The current rent is \$1,003.00 payable on the 1<sup>st</sup> of the month. The tenant continues to reside in the rental unit at the time of the hearing.

The landlord gave evidence that the tenant failed to pay the rental amount for September, 2016. The landlord gave evidence that the tenant made partial rent payment of \$1,000.00 on October 3, 2016 and a partial rent payment of \$1,000.00 on November 3, 2016. It is the landlord's evidence that the total amount of arrears for this tenancy is \$1,009.00. The landlord gave evidence that while the tenant made partial payments for the months of October and November the tenancy has not been reinstated and the payment was accepted for use and occupancy only.

The landlord confirmed that per the terms of the written tenancy agreement late payments are subject to an administrative fee of \$25.00 each.

#### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,003.00. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did they dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, September 15, 2016.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy including late fees is \$1,084.00.

Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act* and a Monetary Order for unpaid rent owing of \$1,084.00 as at November 24, 2016, pursuant to section 67 of the *Act*.

As the landlord's application was successful, they are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

#### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,184.00 against the tenant. The tenant must be served with this Order as soon as possible. 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 28, 2016

---

Residential Tenancy Branch