



# 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 the landlords' Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords.

While the landlords' original Application for Dispute Resolution sought an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and a monetary order for unpaid rent the landlords later submitted an Amendment to an Application for Dispute Resolution seeking to include a request for an order of possession based on a 1 Month Notice to End Tenancy for Cause. I accept this amendment.

The landlords provided documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on October 14, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed.

The landlords also included text messages between the parties showing that on October 17, 2016 the landlords informed the tenant there was a registered mail package notification in the mail for her and that they placed it in her mailbox. The landlords have submitted a copy of the registered mail package that was returned to the landlord as unclaimed.

Based on the submissions of the landlords, I find that the tenant is deliberately attempting to avoid service of these documents and she has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and/or for cause; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47, 55, 67, and 72 of the *Act*.

### Background and Evidence

The landlord testified the tenancy began on August 22, 2016 as a month to month tenancy for a monthly rent of \$950.00 due on the 1<sup>st</sup> of each month with a security deposit of \$475.00 paid.

The landlord also submitted that they had returned \$385.00 of the security deposit leaving a balance held in the amount of \$90.00.

The landlords submitted into evidence the following relevant documents:

- A copy of a 1 Month Notice to End Tenancy for Cause issued on October 1, 2016 with an effective vacancy date of November 1, 2016 citing the tenant has been repeatedly late paying rent; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlords' property at risk; the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant; breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and the tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on October 1, 2016 with an effective vacancy date of October 13, 2016 due to unpaid rent in the amount of \$950.00 due October 1, 2016; and
- A copy of a Proof of Service – Notice to End Tenancy form confirming that both notices were served to the tenant by attaching them to the door or other conspicuous place on October 3, 2016 at 10:00 a.m.

The 1 Month Notice states the tenant had ten days to apply for Dispute Resolution or the tenancy would end. The 10 Day Notice stipulated the tenant had five days to either pay the rent owed in full or file an Application for Dispute Resolution. There is no evidence before me that the tenant paid the rent in full or applied to dispute the 10 Day Notice within five days or the 1 Month Notice within ten Days.

The landlord submitted the tenant has failed to pay rent for the months of October, November, and December 2016. The landlord stated the tenant did pay her \$300.00 the week prior to this hearing, leaving a balance owing of \$2,550.00.

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with both notices to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on October 6, 2016 and the effective date of the 10 Day notice is amended to October 16, 2016 and the effective date of the 1 Month Notice is amended to November 30, 2016, pursuant to Section 53 of the *Act*. I accept that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act* or file an Application for Dispute Resolution to dispute either of the Notices within the respective time frames allowed under Section 46(4) and 47(4).

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) and 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of either Notice.

Based on the landlord's undisputed testimony I also accept and find the tenant owes the landlords \$2,550.00 in unpaid rent.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,650.00** comprised of \$2,550.00 rent owed and the \$100.00 filing fee paid by the landlords for this Application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 02, 2016

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Residential Tenancy Branch