



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing 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;
- a monetary order for unpaid rent pursuant to section 67;
- an order to keep all or part of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 15 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 November 1, 2016 (the "10 Day Notice"), on that same date by hand delivering a copy to the tenant. In accordance with section 88 of the *Act*, I find that the tenant was served with the landlord's 10 Day Notice on November 1, 2016.

The landlord testified that the landlord's application for dispute resolution dated November 8, 2016 was sent to the tenant on that same date by registered mail. 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 November 13, 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 while the tenant has made some payments against the amount owing the tenancy remains in arrears by \$875.00. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to decrease the landlord's monetary claim from \$3,875.00 to \$875.00.

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 April, 2013. The current rent is \$850.00 payable on the 1<sup>st</sup> of the month. A security deposit of \$300.00 was paid at the start of the tenancy and is still held by the landlord. The tenant continues to reside in the rental unit at the time of the hearing.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$3,875.00, the amount initially sought in the 10 Day Notice. The landlord gave evidence that the tenant made a payment of \$3,000.00 on November 16, 2016. The landlord further testified that the tenant made a further payment of \$850.00 on December 7, 2016. The landlord testified that while the tenant made some payments the tenancy remains in arrears by \$875.00. The landlord testified that any payment made by the tenant has not reinstated the tenancy and payments were accepted for use and occupancy only.

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 \$850.00. 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 the tenant 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 effective date of the 10 Day Notice, November 11, 2016. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$875.00. I issue a Monetary Order for unpaid rent owing of \$875.00 as at December 8, 2016, the date of the hearing, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$300.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was successful, the landlord is 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 \$675.00 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: December 9, 2016

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Residential Tenancy Branch