



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent;
- a monetary order for money owed or compensation for damage or loss;
- a monetary order to keep all or part of the security deposit; and
- recovery of the filing fee paid for this application from the tenant.

The tenant did not appear during the hearing which lasted thirty-two minutes. The landlord appeared with an agent at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

The landlord testified that on November 10, 2016 he sent a package that included the landlord's Application, Notice of Hearing and documentary evidence by registered mail to the tenant at the rental unit. The landlord provided a Tracking Number orally to confirm the mailing. Taking into account that the online registered mail tracking information supports the undisputed testimony of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Application, Notice of Hearing and documentary evidence as of November 15, 2016, the fifth day after the registered mailing.

### Preliminary and Procedural Matters

The landlord withdrew his Application for a monetary order for money owed or compensation for damage or loss.

### Issue(s) to be Decided

- Is the landlord entitled to an order of possession for unpaid rent, pursuant to s.55 of the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent, pursuant to s.67 of the *Act*?
- Is the landlord entitled to a monetary order to keep all or part of the security deposit, pursuant to s.38 of the *Act*?
- Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to Section 72 of the *Act*?

### Background and Evidence

The landlord testified that the month to month tenancy started on June 1, 2016 pursuant to a written tenancy agreement that was signed by the tenant on June 7, 2016. The rent is \$1,100.00 due on the first day of each month. The landlord testified that he received a security deposit in the amount of \$550.00 on June 1, 2016.

The landlord testified that he did not receive rent from the tenant that was due for each of the months of August, September, October, November and December 2016. The landlord's claim is for \$5,500.00 for unpaid rent for these months.

The landlord testified that on October 22, 2016 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), which had an effective date of October 31, 2016, was served by registered mail to the tenant's rental unit. The landlord provided a Tracking Number orally to confirm the registered mailing. The Notice indicated that it would be automatically cancelled if the landlord received \$3,300.00, the unpaid rent as at October 1, 2016, 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 unit by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

### Analysis

Based on the above, the testimony and documentary evidence, and on a balance of probabilities, I find the following.

In the absence of evidence to the contrary, I find that the tenant was required to pay the monthly rent amount of \$1,100.00 for each of the months of August, September, October, November

and December 2016. Accordingly, I find that the landlord has established a total monetary claim in the amount of \$5,500.00 for unpaid rent.

Section 90 of the *Act* stipulates that a document that is sent by registered mail is deemed to be received on the fifth day after the registered mailing. Therefore, I find that the tenant received the 10 Day Notice on October 27, 2016, the fifth day after the registered mailing.

Section 46(1) of the *Act* stipulates that a 10 day Notice is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on October 27, 2016, I find that the earliest effective date of the 10 Day Notice is November 1, 2016.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was November 1, 2016.

I find that the tenant was served with a 10 Day Notice that required the tenant to vacate the rental unit on November 1, 2016, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the 10 Day Notice to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the *Act*, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice.

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.

Pursuant to section 72 of the *Act*, I find that the landlord is entitled to retain the security deposit in partial satisfaction of the claim.

As the tenancy has ended pursuant to section 46(5), I find that the landlord is entitled to an Order of possession that is effective two days after service on the tenant.

Based on these determinations, I grant the landlord a monetary Order for the balance of \$5,050.00.

### Conclusion

Pursuant to section 55, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is entitled to recovery of the \$100.00 filing fee.

The landlord may retain the security deposit which I have set off against the rent that is owed, as described below.

The landlord is entitled to a monetary order in the total amount of \$5,050.00 as follows:

August Unpaid Rent	\$1,100.00
September Unpaid Rent	\$1,100.00
October Unpaid Rent	\$1,100.00
November Unpaid Rent	\$1,100.00
December Unpaid Rent	\$1,100.00
Filing Fee	\$ 100.00
Subtotal	\$5,600.00
Less Security Deposit	\$ 550.00
<b>Total</b>	<b>\$5,050.00</b>

Pursuant to section 67, the landlord is granted a monetary order in the amount of \$5,050.00 which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 14, 2016

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Residential Tenancy Branch