



# 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 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; and
- authorization to recover the filing fee for this application pursuant to section 72.

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 November 2, 2016 (the "10 Day Notice"), on that same date by posting a copy on the rental unit door. In accordance with section 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on November 5, 2016, three days after its posting.

The landlord testified that the landlord's application for dispute resolution dated November 10, 2016 was served on the tenant by posting on the rental unit door on that same date. While an application by a landlord under section 55 requesting an order of possession for the landlord may be served by posting a copy on the door or other conspicuous place at the tenant's address, posting is not an accepted manner of service for other applications for dispute resolution. Consequently, I am severing the landlord's application and in accordance with paragraph 89 (1)(b) and section 90 of the *Act*, I find that the tenant was deemed served with the portion of the landlords' application requesting an order of possession on November 13, three days after its posting. I find that the landlord has not served the tenant with the portions of the application regarding the monetary order in accordance with paragraph 89 (1)(a) of the

*Act*. I therefore, dismiss the portions of the landlord's application requesting a monetary order with leave to reapply.

The landlord testified that the landlord's evidence package dated November 24, 2016 was similarly served on the tenant by posting on the rental unit door on that same date. In accordance with sections 88 and 90 of the *Act*, I accept the landlord's undisputed testimony that the evidence package was deemed served on the tenant on November 27, 2016.

#### Issue(s) to be Decided

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

#### Background and Evidence

The landlord provided testimony regarding the following facts. This month-to-month tenancy began in October, 2015. The current rent is \$600.00, 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 of the hearing the tenancy is in arrears by \$2,300.00. The landlord testified that the tenant made some irregular payments prior to the 10 Day Notice but has made no subsequent payments since the 10 Day Notice was served.

#### 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 \$600.00. I accept the evidence before me that the rent was in arrears at the time the 10 Day Notice was issued. I accept the evidence 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 corrected effective date of the 10 Day Notice, November 15, 2016. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

The landlord has not served the tenant in a manner required by paragraph 89(1)(a) of the *Act* for the portions of the application regarding a monetary order. The portion of the landlord's application requesting a monetary order is dismissed with leave to reapply.

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.

The landlord's application for a monetary order is dismissed with leave to reapply.

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 19, 2016

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Residential Tenancy Branch