



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PRINCESS DAPHNE APTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNR, OPR

### **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 15 minutes. The landlord, SV, appeared on behalf of both landlords ('the landlords'), and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the dispute resolution proceeding** The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlords testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated November 2, 2016, with an effective date of November 12, 2016, by posting it on the door of the rental unit. A Proof of Service was signed by a witness and the landlord confirming the service of the 10 Day Notice on November 2, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 10 Day Notice on November 5, 2016, three days after its posting.

The landlords testified that the hearing package was served to the tenant by registered mail on November 15, 2016. A copy of the registered mail receipt was included in the landlords' evidence. In accordance with sections 89 and 90 of the *Act*, I find the tenant deemed served with the hearing package on November 20, 2016.

### **Issues(s) to be Decided**

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

### **Background and Evidence**

The landlords testified regarding the following facts. The tenancy agreement that was submitted as part of the direct request had listed a different landlord and tenant, as the tenancy began in March 2012 with a different landlord and tenant. The current landlords took over in 2016, and the tenant on the written tenancy agreement has since moved out, leaving his roommate, the current tenant. The identity of the current tenant was verified in October 2016 with his driver's license, and is the named person on the 10 Day Notice. The tenant continues to reside in the rental suite. The current tenancy is month-to-month with \$630.00 rent payable on the first day of each month. The landlords currently hold a \$315.00 security deposit for this tenancy.

The landlords issued the 10 Day Notice, indicating an effective move-out date of November 12, 2016. The notice states that the tenant failed to pay rent in the amount of \$1,540.00, which was the total rent outstanding at the time the notice was issued. The landlords provided undisputed testimony that the tenant has not paid rent of \$630.00 for the months of October, to December 2016, as well as January 2017. The tenant owes partial rent payments of \$250.00 for August 2016 and \$30.00 for the month of September 2016. The landlords seek a monetary order of \$2,800.00 for the above period.

### **Analysis**

**Section 26** of the *Act*, in part, states as follows:

#### **Rules about payment and non-payment of rent**

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The landlords provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on November 7, 2016, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on November 12, 2016, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by November 15, 2016, the corrected effective date of that Notice. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*.

The landlords provided undisputed evidence that the tenant failed to pay rent of \$2,800.00 for the months of August 2016 through to January 2017, inclusive. Therefore, I find that the landlords are entitled to \$2,800.00 in rental arrears for the above period.

The landlords continue to hold the tenant's security deposit of \$315.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit of \$315.00 plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

### **Conclusion**

I grant an Order of Possession to the landlords effective **two (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 \$2,485.00 monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent, and also allows the landlords to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for August 2016	\$250.00
Unpaid Rent for September 2016	30.00
Unpaid Rent for October 2016	630.00

Unpaid Rent for November 2016	630.00
Unpaid Rent for December 2016	630.00
Unpaid Rent for January 2017	630.00
Less Security Deposit	-315.00
<b>Total Monetary Order</b>	<b>\$2,485.00</b>

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: January 17, 2017

---

Residential Tenancy Branch