



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CONNAUGHT MANAGEMENT LTD. DBA CML PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

OPR MNR

### Introduction

This matter originally proceeded by way of direct request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “Act”), and dealt with an application for dispute resolution by the landlord for an order of possession for unpaid rent and a monetary order for unpaid rent. On December 20, 2016, an adjudicator adjourned the matter to a participatory hearing which was held this date, Wednesday, January 18, 2017 at 9:30 a.m. Pacific Time. The Interim Decision written by the adjudicator dated December 20, 2016 should be read in conjunction with this decision.

An agent for the named landlord company (the “agent”) attended the teleconference hearing as scheduled and provided affirmed testimony. The agent also presented documentary evidence. I have described the evidence relevant to the matters before me below.

As the tenant did not attend the hearing, service of the original Notice of Direct Request Proceeding, the Notice of an Adjourned Hearing, the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The agent provided affirmed testimony that the Notice of Direct Request Proceeding and documentary evidence was served on the tenant who remains in the rental unit by registered mail. The registered mail tracking number has been included on the cover page of this decision for ease of reference. The agent affirmed that the first package was mailed on December 16, 2016 and was addressed to the name of the tenant and addressed to the rental unit address and that the tenant continues to occupy the rental unit. The first registered mail package was returned to sender unopened.

Regarding the Notice of Adjourned Hearing and Interim Decision the agent affirmed that those were served on the tenant by registered mail on December 23, 2016. A copy of the registered mail tracking number has also been included on the cover page of this decision for ease of reference.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. According to the online registered mail tracking information the first and

second registered mail packages were mailed on the dates as claimed by the agent. Pursuant to section 90 of the *Act*, I find the tenant is deemed served as of December 21, 2016 with the first package and that the tenant was deemed served with the second package as of December 28, 2016 as the second registered mail package was mailed on December 23, 2016.

I also note that failure to pick up or sign for registered mail does not constitute a reason for a Review Consideration under the *Act*

### Preliminary and Procedural Matters

At the outset of the hearing, the agent confirmed that the actual name of the tenant was spelled incorrectly on the Notice of Hearing documents which I would correct pursuant to section 64(3) of the *Act*. I find that the incorrect spelling was minor in nature and that the tenant would know or ought to have known that the Notice of Hearing documents applied to the tenant based on the address of the rental unit which was correct, the first name which was correct and the last name of which only contained a minor spelling error which has been corrected.

The agent testified that in addition to the rent owed as claimed in the original Application, the landlord has suffered a loss of rent for January 2017 as the tenant continues to occupy the rental unit. As a result, the agent requested to amend the Application to include rent owed for January 2017. I find this request to amend the Application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement as the tenant continues to occupy the rental unit. Therefore, I amend the Application to \$4,330.00 which includes unpaid rent, loss of rent and one \$30.00 NSF (non-sufficient funds) fee for the cheque the tenant issued which was returned to the landlord as NSF with a \$30.00 NSF fee.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. The agent testified that the month to month tenancy began on April 1, 2015. Monthly rent of \$775.00 was due on the first day of each month during the tenancy. The tenant paid a security deposit of \$387.50 at the start of the tenancy which the landlord continues to hold.

The landlord applied for dispute resolution on December 15, 2016, through the direct request process after a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated October 12, 2016 was served on tenant by posting to the tenant's door on October 12, 2016. A copy of the 10 Day Notice was submitted in evidence. The effective date listed on the

10 Day Notice was October 22, 2016 and indicates that \$3,555.00 in rent arrears was owed as of October 12, 2016. The effective date automatically corrects under section 53 of the *Act* to October 25, 2016 as the 10 Day Notice was posted to the door on October 12, 2016 and pursuant to section 90 of the *Act* which states that documents posted to the door are deemed served three days later. The agent testified that the tenant did not dispute the 10 Day Notice or pay the amount owing as indicated on the 10 Day Notice.

The landlord stated that the tenant continues to over-hold the rental unit and that the landlord suffered a loss of January 2017 rent of \$775.00 as a result. The landlord is seeking an order of possession and a monetary order and if he is entitled would like the recovery of the cost of the filing fee and to have the security deposit offset from the amount owed, if possible.

### Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the agent, and on the balance of probabilities, I find the following.

**Order of Possession** - I accept the agent's undisputed testimony that the tenant failed to pay the full amount of rent owed or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date on the 10 Day Notice, October 25, 2016. Therefore, pursuant to section 55 of the *Act* I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

**Monetary order** - I accept the agent's undisputed testimony that the tenant owes a total of \$4,330.00 in unpaid rent, loss of rent and an NSF fee. I note that the testimony of the landlord matches the amount being claimed at this hearing.

As the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

Given the above, I find the landlord has established a total monetary claim of **\$4,430.00** comprised of unpaid rent, loss of rent, NSF fee and the recovery of the cost of the filing fee. As the landlord continues to hold the tenant's security deposit of \$387.50 which has accrued no interest to date, and pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenant's full security deposit of \$387.50 in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the *Act*, I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of \$4,042.50.

### Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenant, which must be served on the tenant and may be enforced in the Supreme Court of British Columbia. I find the tenancy ended on October 25, 2016 and that the tenant has been over-holding the rental unit since that date.

The landlord has established a total monetary claim of \$4,430.00 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$387.50 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order for the balance owing by the tenant to the landlord in the amount of \$4,042.50.

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: January 18, 2017

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Residential Tenancy Branch