



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, 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 damage to the unit; and
- recovery of the filing fee paid for this application from the tenant.

The landlord and tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenant were 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.

### Preliminary and Procedural Matters

The landlord submitted late evidence that was not served on the tenant. The tenant objected to the late evidence. The late evidence was not considered except for a copy of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") which the tenant had received on December 3, 2016 posted to her door.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the landlord's application I have determined that I will not deal with all the dispute issues the landlord has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the 10 Day Notice. Therefore, I will deal with the landlord's requests for an order of possession for unpaid rent, a monetary

order for unpaid rent and recovery of the filing fee from the tenant. I dismiss the balance of the landlord's application with leave to reapply.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent? and
- Is the landlord entitled to recovery of the filing fee paid for this application from the tenant?

Background and Evidence

The undisputed testimony of the landlord and tenant established that a month to month tenancy started on February 1, 2016. While the parties did not agree as to whether there was a written tenancy agreement, they agreed that rent in the amount of \$650.00 is due on the first and the fifteenth day of each month, for a total monthly rent of \$1,300.00. The landlord and tenant also agreed that a security deposit in the amount of \$650.00 was provided by the tenant on or about January 15-20, 2016.

The landlord testified that the tenant did not pay the full amount of rent due for each of the months of October, November and December 2016; and January 2017. The landlord testified that the tenant owes \$600.00 for rent that was due for the month of October 2016 as well as \$1,300.00 for rent that was due for each of the months of November 2016, December 2016 and January 2017. The landlord's total monetary claim for unpaid rent is \$4,500.00.

The landlord testified that the tenant paid \$200.00 towards the rent arrears on December 15, 2016. The landlord testified that he applied the payment towards unpaid rent for October 2016 reducing the unpaid amount for that month from \$800.00 to \$600.00, the amount claimed by the landlord.

The landlord and tenant agree that the landlord served a 10 Day Notice in person on December 3, 2016 by leaving a copy with the tenant. The 10 day Notice shows rent owing for November 2016 as well as amounts for October and December 2016. The 10 Day Notice was dated December 3, 2016 and required the tenant to move out by December 13, 2016.

The tenant testified that she paid the full amount of rent due for October 2016. The tenant testified that she had a receipt in the total amount of \$3,900.00 for rent paid for each of the months of August, September and October 2016. The tenant did not submit

a copy of the receipt as evidence at the hearing. The landlord testified that no such receipt was issued as the October rent was not paid in full.

The tenant agreed that she did not pay the full amount of rent for each of the months of November 2016, December 2016 and January 2017.

The tenant testified that the \$200.00 payment made to the landlord on December 15, 2016 was a payment towards the rent owed for November 2016 and not October 2016. The tenant testified that she only owes \$1,100.00 for unpaid rent for the month of November 2016. The tenant also acknowledged that she owes rent in the amount of \$1,300.00 for each of the months of December 2016 and January 2017. The total amount of unpaid rent that the tenant agrees she owes is \$3,700.00.

The tenant testified that she tried to make a further payment to the landlord four days after the \$200.00 payment on December 15, 2016, but the landlord got “violent” with her. The tenant testified that she walked away without making a further payment as planned.

The tenant testified that she and the landlord had conversations wherein the landlord told the tenant that she did not have to leave and that they would work something out about the rent arrears. The tenant testified that the last conversation she had with the landlord about working out an arrangement for the rent arrears instead of moving out was on January 7<sup>th</sup>, 2017. The tenant testified that no arrangements had been agreed upon yet as they had not gotten around to that part of the discussion. The landlord denied any such conversations.

The landlord is seeking an order of possession for unpaid rent.

The landlord is also seeking recovery of the filing fee for their application from the tenant.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find that the tenant did not pay the full amount of rent that was due for each of the months of October, November and December 2016; and January 2017. I accept the landlord’s testimony that the rent due for October 2016 was not paid in full as I find that the tenant did not provide sufficient evidence to prove that it was paid. The tenant did

not submit a copy of the receipt she claims was issued to her for the rent paid in October 2016.

Based upon the foregoing, I find that the landlord is entitled to a monetary award in the total amount of \$4,500.00 for unpaid rent for each of the months of October (\$600.00), November (\$1,300.00) and December 2016 (\$1,300.00); and January 2017(\$1,300.00).

I allow the landlord to retain the security deposit in the amount of \$650.00 to be applied against the amounts owed by the tenant for unpaid rent.

I accept the testimony of the landlord that after the 10 Day Notice was served, there were no conversations with the tenant about the tenancy continuing on the basis that the parties would work something out about the rent arrears. In making this finding, I have taken into consideration the fact that there was ample opportunity for the landlord and tenant to work something out about the rent arrears to allow the tenancy to continue if that really was the mutual understanding of the parties. The tenant claims that as of January 7, 2017 the parties hadn't yet had a discussion about the details of any arrangement although the landlord had allegedly told the tenant on that date that she didn't need to leave. I find that the landlord has provided a more plausible explanation for there not being any specific arrangement in place. The landlord's explanation is that that the conversations did not take place as alleged by the tenant. Accordingly, I accept the landlord's testimony that at no time did the landlord communicate to the tenant that he wouldn't be relying upon the 10 Day Notice to end the tenancy.

I find that the tenant was served with the 10 Day Notice on December 3, 2016, in accordance with section 88 of the *Act*. I also find that the 10 Day Notice complies with section 52 of the *Act* and that it is valid.

I accept the undisputed evidence before me that the tenant has failed to pay the rent owed in full within five (5) days granted under section 46(4) of the *Act* and that they did not dispute the 10 Day Notice within that 5 day period.

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. The undisputed evidence established that on December 3, 2016 the tenant received the 10 Day Notice requiring the tenant to vacate the rental unit on December 13, 2016, pursuant to section 46 of the *Act*.

Based on the foregoing, 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, December 3, 2016. Accordingly, the landlord is entitled to an order of possession.

As the landlord's application is successful, I find that the landlord is entitled to recovery of the filing fee for their application from the tenant.

Based upon the foregoing, I find that the landlord is entitled to a monetary order in the total amount of \$3,950.00 as follows:

October 2016 Unpaid Rent	\$ 600.00
November 2016 Unpaid Rent	\$ 1,300.00
December 2016 Unpaid Rent	\$ 1,300.00
January 2016 Unpaid Rent	\$ 1,300.00
Subtotal	\$ 4,500.00
Filing Fee	\$ 100.00
Less Security Deposit	\$ 650.00
<b>Total</b>	<b>\$ 3,950.00</b>

### Conclusion

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

The balance of the landlord's application is successful and the tenancy will end on the basis of the 10 Day Notice dated December 3, 2016.

The landlord is entitled to retain the security deposit in the amount of \$650.00 to be applied against the amounts owed by the tenant for unpaid rent.

The landlord is granted a monetary order in the amount of \$3,950.00 for rent owed and the filing fee. 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.

Pursuant to section 55 of the *Act*, 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.

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 30, 2017

---

Residential Tenancy Branch