



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Li-Car Management Group  
and [tenant name suppressed to protect privacy]

## **FINAL DECISION**

### **Dispute Codes:**

**OPR, MNR**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an order of possession for unpaid rent, a monetary Order for unpaid rent. The landlord originally applied via the Direct Request Proceeding process.

On January 13, 2017 an interim decision was issued adjourning the matter to this participatory hearing. The landlord was required to serve the tenant with Notice of this hearing. On January 18, 2017 the landlord served the tenant the hearing documents via registered mail to the rental unit address. A Canada Post tracking number and receipt was provided as evidence of service.

The landlord said the tenant continues to reside in the rental unit.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act.

The tenant did not appear at the hearing.

### **Preliminary Matters**

The landlord requested the application be amended to include the loss of February rent revenue.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure provides:

#### ***4.2 Amending an application at the hearing***

*In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.*

As rent is the most basic term of a tenancy I find that the application is amended to include a claim for per diem rent for each day the tenancy has occupied the rental unit beyond any end of tenancy.

The landlord assumed responsibility for this tenancy effective October 1, 2015. The name on the tenancy agreement is in the previous agents' name.

### 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 loss of rent revenue?

### Background and Evidence

The interim decision sets out the details of this tenancy and service of the 10 day Notice ending tenancy for unpaid rent issued on January 4, 2017 as follows:

*The landlords submitted the following evidentiary material:*

- *A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;*
- *A copy of a residential tenancy agreement which was signed by a landlord who is not the applicant and the tenant on April 1, 2015, indicating a monthly rent of \$720.00, due on the first day of the month for a tenancy commencing on April 1, 2015;*
- *A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and*
- *A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 4, 2017, and personally served to the tenant on January 4, 2017, with a stated effective vacancy date of January 14, 2017, for \$720.00 in unpaid rent.*

*Documentary evidence filed by the landlords indicates that the 10 Day Notice was personally served to the tenant at 5:30 pm on January 4, 2017. The landlord had the tenant sign the Proof of Service Notice to End Tenancy to confirm personal service. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.*

The Notice indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant paid the rent in full or filed an Application for Dispute Resolution within five days.

The landlord said that on January 17, 2017 payment in the sum of \$500.00 was applied to rent owed for December 2016. A receipt for use and occupancy was issued.

On January 20, 2017 the landlord received a government cheque on behalf of the tenant, in the sum of \$720.00. The landlord applied \$220.00 to the balance of December 2016 rent owed and \$500.00 to January 2017 rent; leaving a balance owed in the sum of \$220.00. A receipt for use and occupancy was issued.

The tenant has not paid February 2017 rent in the sum of \$720.00.

### Analysis

I find that the tenant received the Notice ending tenancy on the date it was personally given to the tenant; January 4, 2017. The tenant signed a proof of service document confirmed receipt of the Notice.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant received this Notice on January 4, 2017, I find that the earliest effective date of the Notice is January 14, 2017; the date on the Notice.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on January 14, 2017, 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 Notice ending tenancy 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. The tenant paid December 2016 rent but that rent was not paid within five days of January 4, 2017. The landlord issued receipts for use and occupancy only, as notice to the tenant that the tenancy was not reinstated. Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; January 14, 2017.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$360.00 from January 1 to 14, 2017, inclusive and that the landlord is entitled to compensation in that amount.

I find that the tenant has been over holding in the rental unit since January 14, 2017. Residential Tenancy Branch policy suggests that a tenant must pay per diem rent for each day they occupy a rental unit beyond the end date of a tenancy. Therefore, as the

tenancy ended effective January 14, 2017. I find that the landlord is entitled to compensation for per diem rent from January 15 to February 9, 2017, inclusive, in the sum of \$573.00.

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.

The landlord has been granted an order of possession that is effective two days after service to the tenant. This order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

Based on these determinations I grant the landlord a monetary order in the sum of for the balance of \$1,033.00. In the event that the tenant does not comply with this order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

The landlord has not claimed against the security deposit. 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. If the landlord chooses to retain the deposit the monetary order will be reduced by the value of the deposit. The tenancy agreement supplied as evidence indicates a security deposit in the sum of \$360.00.

### Conclusion

The landlord is entitled to an order of possession and monetary order for unpaid rent.

The landlord may choose to retain the security deposit against the sum owed by the tenant. The monetary order will then be reduced by the sum of \$360.00.

The landlord is entitled to filing fee costs.

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: February 09, 2017

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Residential Tenancy Branch