



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LIVIN  
**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 landlord's agent, EH, testified on behalf of the landlord in this hearing and were given full authority to do so by the landlord. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application.

JS, the landlord's property manager, gave undisputed sworn testimony that he had personally served the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenant on December 12, 2016, with an effective date of December 15, 2016. The tenant confirmed that he received the 10 Day Notice. In accordance with section 88 of the *Act*, I find the tenant duly served with the 10 Day Notice, with a corrected effective date of December 22, 2016. No written evidence was submitted by either party for this hearing.

## Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

## Background and Evidence

The landlord's agent testified regarding the following facts. This month-to-month tenancy began on some time in 2015, and the landlord took over the tenancy in November 2015 after he had purchased the house. Rent was set at \$1,650.00 per month, payable on the first day of each month. The landlord's agent testified that there was no written tenancy agreement, but the arrangement was that six tenants would reside in the rental unit, with the rent being split amongst the six tenants by the landlord. The landlord issued the 10 Day Notice, indicating an effective move-out date of December 15, 2016. The landlord's agent testified that all the tenants had moved out pursuant to the 10 Day Notice, except for the tenant in this hearing. The



landlord is seeking an Order of Possession for unpaid rent, plus a monetary order for the tenant's share of the rent, which was \$275.00 per month, for the months of October through to December 2016 and January 2017 for a total of \$1,100.00 plus recovery of the \$100.00 filing fee.

The landlord's agent testified that the tenant continues to reside at the rental property although he had not paid rent for the months of October 2016 through to January 2017. The landlord's agent submitted that even after the 10 day Notice was served to the tenant in November, the tenant has not made any efforts to make any payment towards the outstanding rent.

The tenant testified that the tenancy was complicated as the landlord's property manager was formerly friends with the tenant, and now he is employed by the landlord as the property manager of the property. He testified that the landlord's property manager actually resides at the rental property as well, upstairs, while he resided in the basement suite. The tenant testified that there was no written tenancy agreement, and that he had never signed anything in regards to this tenancy. He said that the landlord's property manager moved upstairs on September 1, 2016, and although he does not dispute the fact that he has not paid any rent for the months of October 2016 through to January 2017, he believed that the landlord's property manager was trying to turn everyone against him, and that the landlord simply wanted to end the tenancy for personal use so he could tear down the house, and not because of the unpaid rent.

The landlord's agent replied that he did acknowledge that the terms of the tenancy were not very clear, and that is why he was seeking only \$275.00 from the tenant, and not the entire \$1,650.00. The landlord's property manager testified that he tried to collect rent from the tenant numerous times, and that the tenant had never approached him to pay the rent.

The landlord's agent testified that he tried to establish a property tenancy agreement with the tenant, which did not happen. As the tenant had not paid the rent that is owing, the landlord is seeking an Order of Possession in addition to a Monetary Order.

#### 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 tenant does not dispute the fact that he failed to pay the full rent due on December 17, 2016, within five days of being deemed to have received the 10 Day Notice. The tenant has not made 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 December 22, 2016, the corrected effective date on the 10 Day Notice.



In this case, this required the tenant and any occupant on the premises to vacate the premises by December 22, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

The tenant did not dispute the fact that he failed to pay rent of \$275.00 each for the months of October 2016 through to January 2017. I find that the landlord is entitled to the \$1,100.00 in unpaid rent.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

#### Conclusion

I find that the landlord's 10 Day Notice is valid and effective as of December 22, 2016.

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.

I issue a \$1,200.00 monetary Order in favour of the landlord, which includes unpaid rent and the filing fee for this application. 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.

G MIDTOWN 3 DEVELOPMENT LIMITED PARTNERSHIP

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: February 2, 2017

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Residential Tenancy Branch