



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1065207 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, and an order to retain the security deposit in partial satisfaction of the claim.

Only the Landlord's representative, P.G. appeared at the hearing. He confirmed that he is the Director and shareholder of the company. P.G. gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he served the Tenant with the Notice of Hearing and their Application on March 13, 2017 by registered mail. A copy of the tracking number for the registered mail package is included on the unpublished cover page of this my Decision. Under the *Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of March 18, 2017.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

On the Application for Dispute Resolution the Landlord inverted the Tenant's first and last name. The tenancy agreement filed in evidence as well as the Notice to End Tenancy indicate the correct spelling of the Tenant's name. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend the Landlord's Application for Dispute Resolution to accurately note the Tenant's name.

### Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement and which indicated as follows: the tenancy began July 1, 2016; monthly rent was payable in the amount of \$2,400.00; and, a security deposit in the amount of \$1,200.00 was paid on June 30, 2016.

The Tenant failed to pay rent for the month of February 2017. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on February 7, 2017 by posting to the rental unit door indicating the amount of \$2,400.00 was due as of February 1, 2017 (the "Notice").

Based on the testimony of P.G., I find that the Tenant was served with the Notice on February 7, 2017 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find pursuant to section 88 of the *Residential Tenancy Act*, that the Tenant was served with the Notice as of February 10, 2017.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, February 15, 2017. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

P.G. testified that to his knowledge the Tenant failed to apply to dispute the Notice, and failed to pay the rent.

P.G. further testified that the Tenant also failed to pay rent for March and April 2017 such that at the time of the hearing, the sum of \$7,200.00 was outstanding for rent.

P.G. stated that to his knowledge the Tenant had vacated the property and others, unknown to the Landlord, have moved into the rental unit.

### Analysis

Based on the above, the Landlord's undisputed testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$7,200.00 comprised of unpaid rent for February, March and April 2017.

I order that the Landlord retain the security deposit of \$1,200.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$6,000.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the sum of **\$6,000.00**.

This decision is final and binding on the parties, except as 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: April 10, 2017

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Residential Tenancy Branch