



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR MNR

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for unpaid rent, pursuant to section 55, and a monetary order for unpaid rent, pursuant to section 67.

While the landlord and the landlord's agent, NM, attended the hearing by way of conference call, the tenant did not. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package on April 7, 2017 by way of registered mail. The landlord provided a Canada Post tracking number. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on April 12, 2017, five days after its registered mailing.

The landlord's agent, NM, testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 19, 2017 ("10 Day Notice"), on March 19, 2017, by way of posting to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the landlord's 10 Day Notice on March 22, 2017, three days after its posting.

**Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

**Background and Evidence**

The landlord's agent, NM, testified regarding the following facts. The tenant is on a month-to-month tenancy with monthly rent in the amount of \$1,535.00 payable on the first day of each month. The tenant was recently subjected to a rent increase effective May 1, 2017. The rent was previously \$1,490.00 per month. The landlord holds a security deposit in the amount of \$460.00 for this tenancy. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, indicating an effective move-out date of March 31, 2017. The landlord's agent testified that the tenant has not paid any of the outstanding rent since the 10 Day Notice was issued. The tenant owes the following in outstanding rent: \$1,360.00 for February 2017, \$1,490.00 each for the months of March and April 2017, and \$1,535.00 for May 2017. The total outstanding rent is \$5,875.00. The landlord is seeking an Order of Possession as well as monetary compensation for the unpaid rent.

**Analysis**

The landlord's agent, NM, provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make 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 April 2, 2017, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by April 2, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

The landlord's agents provided undisputed evidence that the tenants failed to pay the outstanding rent in the amount of \$5,875.00. Therefore, I find that the landlord is entitled to \$5,875.00 in outstanding rent for this tenancy.

The landlord continues to hold the tenant's security deposit of \$460.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

### **Conclusion**

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenant or anyone on the premises 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 \$5,415.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

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.

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: May 10, 2017

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Residential Tenancy Branch