



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This is a reconvened hearing dealing 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;
- a monetary order for unpaid rent pursuant to section 67.

The landlord's agents (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the Notice of a Reconvened Hearing Package and the interim decision by posting it to the rental unit door on May 5, 2017. The landlord stated that the documentary evidence package received by the Residential Tenancy Branch (RTB) on May 5, 2017 was sent by Canada Post Registered Mail on May 4, 2017 as confirmed by the submitted copy of the Canada Post Customer Receipt Tracking label. The landlord clarified that this package was returned as "unclaimed". The landlord also stated that the late evidence package that the RTB received on June 8, 2017 was not served to the tenant. The landlord also clarified that the tenant was currently staying in a "hospice" as of the beginning of June 2017. The landlord stated that repeated attempts at communication with the tenant have gone unanswered.

I accept the undisputed affirmed testimony of the landlord and find that the tenant was properly served with the notice of a reconvened hearing package by posting it to the rental unit door on May 5, 2017. I also accept the undisputed affirmed testimony of the landlord that the tenant was properly served with the submitted documentary evidence on May 4, 2017 via Canada Post Registered Mail and find that although "unclaimed" is deemed properly served as per section 90 of the Act. I find that as the landlord has failed to serve the "late" documentary evidence package that this evidence is excluded

from consideration for the hearing as the landlord has failed to comply with section 88 of the Act.

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?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on December 1, 2010 on a fixed term tenancy ending on November 30, 2011 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated November 30, 2010. The monthly rent began as \$680.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$340.00 was paid on November 29, 2010.

The landlord seeks an order of possession and a monetary claim for unpaid rent of \$1,582.60 which consists of:

\$791.30	Unpaid Rent, April 2017
\$791.30	Unpaid Rent, October 2016

The landlord clarified that the tenant failed to pay rent for October 2016 and again for April 2017 and as such was served a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice).

The landlord stated that the tenant was served with the 10 Day Notice dated April 3, 2017 by posting it to the rental unit door on April 3, 2017. The 10 Day Notice sets out that the tenant failed to pay rent of \$791.30 + \$791.30 that was due on April 1, 2017 and an effective end of tenancy date of April 17, 2017.

The landlord has submitted in support of the claim a copy of an authorization to the named landlord to "cash any cheques for rent from residential tenants in the Properties

from and after September 4, 2015 made payable to (the landlord) or any of the undersigned, being the registered owner of the applicable Property...” The landlord stated that “Direction” identifies the named rental property by name and address. The landlord also clarified that the applicant is now the owner of the property.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed testimony of the landlord and find that the tenant was properly served with the 10 Day Notice dated April 3, 2017 by posting it to the rental unit door. The landlord also provided undisputed affirmed testimony that since the 10 Day Notice was served that the tenant has failed to pay any rent and is not aware of an application for dispute filed against the 10 Day Notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant’s failure to take either of these actions within five days led to the end of the tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by April 17, 2017. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

As for the monetary claim, I accept the undisputed affirmed testimony of the landlord in conjunction with the submitted documentary evidence. I find that the landlord has established a claim for unpaid rent of \$1,582.60 for the months of October 2016 and April 2017.

### Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$1,582.60.

These orders must be served upon the tenant. Should the tenant fail to comply with the order(s), the order(s) may be filed in the Supreme Court of British Columbia and the

Small Claims Division of the Provincial Court of British Columbia and enforced as order(s) of those courts.

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: June 13, 2017

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Residential Tenancy Branch