



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      OPR, MNDC, MNSD, FF;    MT, CNC, CNR

### 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 compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause, dated May 1, 2017 ("1 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 1 Month Notice, pursuant to section 47; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 18, 2017 ("10 Day Notice"), pursuant to section 46.

The tenant did not attend this hearing, which lasted approximately 28 minutes. The landlord and his agent, CJ (collectively "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord had 28 minutes during the hearing to locate evidence regarding service of the landlord's application for dispute resolution hearing package to the tenant. The landlord was unable to provide the exact date and method of service. I find that the tenant was not served with the landlord's application, as per section 89 of the *Act*.

I informed the landlord that the landlord's application to retain the tenant's security deposit and for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement was dismissed with leave to reapply. The landlord is not entitled to recover the \$100.00 application filing fee because the landlord was unable to proceed with the landlord's application.

### Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *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.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

#### Issue to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

#### Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on April 1, 2017. Monthly rent in the amount of \$750.00 and an additional \$30.00 for parking, are payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord testified that the tenant was served with the landlord's 10 Day Notice on May 18, 2017, by way of posting to his rental unit door. The notice indicates an effective move-out date of May 28, 2017. The landlord provided a signed, written proof of service to confirm service. The tenant also applied to dispute this notice in his application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on May 21, 2017, three days after its posting.

The landlord seeks an order of possession for unpaid rent. The landlord issued the 10 Day Notice for unpaid rent of \$780.00, due on May 1, 2017, which includes the monthly rent and parking charges. The landlord explained that the tenant did not pay any rent for May, June or July 2017, in the amount of \$750.00 for each month, as well as parking charges for all three months, totalling \$90.00.

#### Analysis

The landlord provided undisputed evidence, as the tenant did not attend this hearing. The tenant failed to pay the full rent due on May 1, 2017, within five days of being deemed to have received the 10 Day Notice. The tenant filed an application to dispute the notice on May 19, 2017, pursuant to section 46(4) of the *Act*, within the five day time limit. However, the tenant did

not appear at this hearing in order to provide evidence. In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on May 31, 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 May 31, 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*.

As I have issued an order of possession based on the landlord's 10 Day Notice, I do not need to examine the landlord's 1 Month Notice.

### Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. 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.

The landlord's application to retain the tenant's security deposit and for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed with leave to reapply.

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The tenant's entire application is dismissed without leave to reapply.

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: July 06, 2017

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Residential Tenancy Branch