



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### Introduction

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with the landlord’s application based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”). The landlord applied for an order of possession for unpaid rent and a monetary order for unpaid rent.

The tenant did not attend the hearing. The landlord attended with a witness and was given a full opportunity to be heard, to present documentary evidence and to make submissions.

As the tenant did not attend the hearing, service of the landlord’s application and the notice of hearing were considered. The landlord provided affirmed testimony that he served the tenant personally with these materials on July 11, 2017. The landlord also submitted a Proof of Service document signed by a witness to this effect, and that witness also attended at the hearing. I accept that the tenant has been served in accordance with the Act.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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

### Background and Evidence

The landlord advised that there was no written tenancy agreement but that this tenancy began on February 15, 2017. It is a month to month tenancy with rent of \$1,100.00 payable on the first day of each month. No security deposit was taken.

The landlord testified that the tenant was late paying rent in March and again in May. In May the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid

Rent but she paid the rent within five days of receipt of that notice. The tenant has not paid rent for July, 2017.

The landlord further testified that he personally served the tenant with the 10 Day Notice on July 2, 2017 at which point the \$1,100.00 owing for July was outstanding. A Proof of Service document signed by a witness included in the landlord's evidence, and that witness also attended at the hearing.

The tenant remains in the rental unit. The tenant has not filed an application to dispute the 10 Day Notice.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. Based on the landlord's undisputed testimony and the Proof of Service document in evidence, I find that the tenant was served with the 10 Day Notice Based on July 5, 2017, three days after it was posted on the tenant's door, pursuant to s. 90 of the Act. I further find that she did not file an application to dispute the 10 Day Notice or pay the overdue rent.

Section 46(5) of the Act provides that if a tenant does not pay the amount outstanding or apply to dispute a 10 Day Notice within five days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

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 July 15, 2017, the corrected effective date on the 10 Day Notice. The tenant and anyone on the premises were required to vacate the premises by that date.

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. As the 10 Day Notice was not posted on the tenant's door until the day after the rent was due, I amend the date of signature to July 2, 2017 pursuant to s. 68(1) of the Act and find that it complies with s. 52 in any event.

Sections 7 and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that

results from that failure to comply. The landlord provided undisputed evidence that the tenant owes \$1,100.00 in unpaid rent and I award the landlord this amount.

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

### 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, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order for the landlord in the amount of **\$1,200.00**. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it 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 Act. Pursuant to s. 77, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 27, 2017

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Residential Tenancy Branch