



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 635 EAST HASTINGS STREET HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR

### Introduction

This review hearing was convened in response to a review consideration decision granted under section 79 of the *Act*.

Following the issuance of the Order of Possession and Monetary Order by way of Direct Request Proceedings, the tenant applied for a review of this decision arguing that she had paid the rent within the time period allowed by section 46 of the *Act*. The tenant applied on the basis that the director's decision or order was obtained by fraud. The arbitrator in the July 17, 2017 Review Consideration Decision determined that, "The tenant provided documentary evidence from her bank that she paid the rent of \$610.00 and a late payment fee of \$25.00, within the five days allowed under section 46 of the *Act*."

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* ("the *Act*") for orders as follows:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") pursuant to section 46 *Act*; and
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*.

Only the landlord, represented by agent C.S. (the "landlord") appeared at the hearing. The landlord was given a full opportunity to be heard, to present sworn testimony and to make submissions.

Following opening remarks the landlord explained that the tenant continues to reside in the rental unit and has not paid rent for July and August. The landlord said she wished to amend her application for dispute resolution to reflect unpaid rent for July and August 2017. Pursuant to section 64(3)(c) of the *Act*, I allow the landlord to amend her

application for a monetary award to reflect unpaid rent of \$1,220.00 for the months of July and August 2017 as the tenant continues to reside in the rental unit.

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

The landlord explained that this tenancy began on April 1, 2017. Rent is \$610.00 per month, and a security deposit of \$305.00 continues to be held by the landlord.

The landlord testified that rent for June 2017 was not paid on the 1<sup>st</sup> of the month as is stipulated by the terms of their tenancy agreement. In her review application, the tenant stated that she had a verbal agreement with the building manager to pay rent late to the landlord by June 10, 2017. As the tenant did not appear at the hearing, no evidence was produced to support this allegation.

During the hearing, the landlord explained that rent was not paid as per the terms of their tenancy agreement on June 1, 2017. On June 2, 2017 a 10 Day Notice to End Tenancy was placed on the door of the tenant's rental unit. The tenant did not dispute this notice, but the landlord acknowledged that a monetary order was slipped under the landlord's office door on June 14, 2017. This money order was for the entire amount owed for unpaid rent for the month of June 2017 along with a \$25.00 returned cheque fee. The landlord provided the tenant with a receipt for use and occupancy only, following receipt of these funds.

### Analysis

Section 88 & 90 of the *Act* govern the service of documents related to notices to end tenancy. Pursuant to sections 88 & 90 of the *Act*, a Notice to End Tenancy that is served on the tenant by way of leaving a copy in a mail box or by attaching a copy to a door or other conspicuous place is deemed to have been served on the tenant three days after its posting. In this case, a 10 Day Notice to End Tenancy posted on the tenant's door on June 2, 2017 is deemed under the *Act* to have been served on the tenant on June 5, 2017. The tenant had therefore until June 10, 2017 to pay the outstanding rent to the landlord or file an application for dispute resolution.

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. Based on the landlord's undisputed testimony I find that the tenant paid rent on June 14, 2017. Furthermore, the tenant did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by June 15, 2017, the corrected effective date of the 10 Day Notice issued on June 2, 2017. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove her entitlement to her claim for a monetary award.

The landlord explained that the tenant remained in the rental unit but rent had not been paid for July or August 2017. I find based on the landlord's undisputed testimony that rent remains outstanding for these months. Pursuant to section 67 of the *Act*, I grant the landlord a monetary award to reflect unpaid rent for these months.

Using the offsetting provision contained in section 72(2)(b) of the *Act*, the landlord may retain the tenant's security deposit against the Monetary Order issued.

### Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within 2 day of service of this Order, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a Monetary Order pursuant to sections 67 & 72 of the *Act* for \$915.00 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for June 2017	\$610.00
Unpaid Rent for July 2017	610.00
Less Security Deposit	<b>(-305.00)</b>
<b>Total Monetary Award</b>	<b>\$915.00</b>

The landlord is provided with a Monetary Order in the above terms and 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: August 25, 2017

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Residential Tenancy Branch