



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was adjourned to a participatory hearing. The Landlord filed under the Residential Tenancy Act (the “Act”), for a Monetary Order for unpaid rent and utilities and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure state that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as outlined below.

The Agent provided testimony in the hearing that the Application for Dispute Resolution by Direct Request and the Notice of Direct Request were sent to the Tenant by registered mail on July 20, 2017, and provided the registered mail receipt in the documentary evidence before me. The Agent also testified that the Notice of Hearing was posted to the door of the Tenant’s rental unit on August 3, 2017, with a witness present. Pursuant to Sections 88 and 90 of the *Act* and the Rules of Procedure, I find that the Tenant has been duly served.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary matters

In the hearing the Agent withdrew their request for a Monetary Order as they stated that the Tenant paid all outstanding rent on August 15, 2017. As a result, I have not considered any monetary claim from the landlord in respect to unpaid rent. The landlord remains at liberty to file a new and separate Application for Dispute Resolution

for any losses related to this tenancy in accordance with any limitations set for in the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for non- payment of rent pursuant to sections 46 and 55 of the *Act*?

### Background and Evidence

The Agent submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) in the amount of \$875.00, dated June 23, 2017. The 10 Day Notice has an effective vacancy date of July 10, 2017, and indicates that it was served on the Tenant on June 23, 2017, by attaching a copy to the door of the Tenant's rental unit. The Agent submitted a witnessed Proof of Service of the 10 Day Notice (the "Proof of Service") indicating that the 10 Day Notice was served in the manner described above.

In the hearing the Agent testified that the tenancy began as a 12 month fixed-term tenancy on April 15, 2016, and subsequently continued on a month to month basis after that. The Agent testified that rent was due on the first of each month in the amount of \$875.00 and submitted a copy of the tenancy agreement into the evidence before me confirming the conditions of the tenancy as noted above.

The Resident Ledger submitted into evidence by the Agent shows that although the Tenant continued to make partial rent payments each month, the payments were not made in full or on time.

In the hearing the Agent provided undisputed testimony that the Tenant continues to occupy the rental unit and that on August 15, 2017, the Tenant paid all outstanding rent as noted above. The Agent testified that despite the payment of rent by the Tenant on August 15, 2017, the Landlord is still seeking an order of possession as the Tenant did not pay the outstanding rent amount within the 5 day time period allowed under the *Act*.

### Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

**Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

**46** (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have heard affirmed testimony, and reviewed all relevant documentary evidence which was served in accordance with sections 88 and 90 of the *Act*, and I find that the Tenant was served with the 10 Day Notice on June 26, 2017, three days after it was posted to the door of the Tenant's rental unit.

I find that the Tenant was obligated to pay the monthly rent in the amount of \$875.00, as per the tenancy agreement. Although there is some ambiguity in the Resident Ledger regarding the *exact* amount of rent owed and paid, based on the affirmed and undisputed testimony of the Agent and the Resident Ledger, I am satisfied that on the day the 10 day Notice was issued, the Tenant owed at least \$0.01 in rent. As a result, I find that the 10 Day Notice is valid, pursuant to Section 46(1) of the *Act*.

As there is no evidence before me to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, July 10, 2017.

Therefore, I find that the Landlord is entitled to an Order of Possession. In the hearing I advised the Agent that the Order of Possession would be effective 2 days from the date of service on the Tenant. Upon further deliberation, the Order of Possession will be effective at 1:00 pm on August 31, 2017, and in consideration that the Tenant has paid all outstanding rent up to and including the month of August, 2017.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 pm August 31, 2017, after service of this Order** on the Tenant. The Landlord is provided with this 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 Supreme Court of British Columbia 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