



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### 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 Landlord, who provided affirmed testimony. The Tenant did not attend. The Landlord 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 Landlord provided affirmed testimony in the hearing that the Application for Dispute Resolution by Direct Request and the Notice of Direct Request were served on the Tenant personally on July 17, 2017, and that the Notice of Hearing was served on the Tenant personally on August 4, 2017. The Landlord also testified that a witness was present for the service of documents on both occasions. 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 Landlord withdrew their request for a Monetary Order. As a result, I have not considered any monetary claims in my decision and the Landlord's application for a Monetary Order for unpaid rent and utilities is dismissed with leave to reapply.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

### Background and Evidence

The Landlord submitted the following relevant evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the Tenant;
- A copy of a month-to-month residential tenancy agreement which was signed by the Landlord and the Tenant on May 1, 2017, indicating a monthly rent of \$700.00, due on the first day of each month for a tenancy commencing on May 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated July 1, 2017, personally served on the Tenant, July 1, 2017, with a stated effective vacancy date of July 11, 2017, for \$700.00 in unpaid rent and \$349.82 in unpaid utilities;
- A witnessed Proof of Service of the 10 Day Notice (the "Proof of Service"). Page 1 of the Proof of Service indicated that the notice was personally served on the Tenant at 9:00 p.m. on July 1, 2017. This date was struck out, initialed, and changed to July 2, 2017. Page 2 of the Proof of Service indicated that the Notice was personally served on the Tenant at 9:00 p.m. on July 1, 2017. This date remained unchanged, however, the signature date for the Witness and the Landlord were both struck out, initialed and changed from July 1, 2017, to July 2, 2017;
- A monetary order worksheet indicating that a partial rent payment was made on July 12, 2017, in the amount of \$350.

In the evidence before me there was some discrepancy regarding the date on which the 10 Day Notice (the "Notice") was served on the Tenant. In the hearing the Landlord provided affirmed and undisputed testimony that they served the Tenant with the Notice, in person, on July 2, 2017. The stated effective date of the Notice was July 11, 2017.

The Notice states that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

The Landlord testified that the Tenant continues to occupy the rental unit, and that they have neither paid the \$350.00 balance owing for July rent, nor any rent for August. There was also no evidence the Tenant filed an application to dispute the Notice.

### 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 reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was served with the 10 Day Notice on July 2, 2017, the day it was personally served on them.

I find that the Tenant was obligated to pay the monthly rent in the amount of \$700.00, as per the tenancy agreement.

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 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that 5 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 corrected effective date of the 10 Day Notice, July 12, 2017.

Therefore, I find that the Landlord is entitled to an Order of Possession.

### Conclusion

The Landlord is granted an Order of Possession, which will be effective **two (2) days after service of this order** on the Tenant. This Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia. As the Landlord withdrew his monetary claim, it is dismissed with 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: August 14, 2017

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Residential Tenancy Branch