



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF, MNR, OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the Residential Tenancy Act (the “Act”), for a Monetary Order for unpaid rent and recovery of the filing fee, 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 and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Landlord provided affirmed and undisputed testimony that the Application and Notice of Hearing were served on the Tenant at the dispute address by registered mail on June 16, 2017, and provided a copy of the registered mail receipt in the evidence before me. As a result, 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 provided affirmed and undisputed testimony that the Tenant continued to occupy the rental unit August 4, 2017, and requested to amend their application to include loss of rent for July 15, 2017 – August 14, 2017. The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

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*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to monetary compensation to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) in the amount of \$750.00, dated June 2, 2017. The 10 Day Notice has an effective vacancy date of June 12, 2017, and indicates that it was served on the Tenant on July 2, 2017, by attaching a copy to the door of the Tenant's rental unit. The Landlord submitted a witnessed and signed Proof of Service of the 10 Day Notice (the "Proof of Service") and a separate witness statement indicating that the Notice was attached to the door of the Tenant's rental unit on June 2, 2017.

In the hearing the landlord testified that the Tenant originally moved into the rental unit as a roommate of another Tenant approximately 1.5 years ago. The Landlord testified that the original Tenant gave Notice to move out of the property in January, 2017, and subsequently moved out; at which time an oral agreement was in place for the above named Tenant to take over the tenancy and to pay rent in the amount of \$750.00 on the 15<sup>th</sup> of each month. The Landlord testified that no security deposit was paid by the Tenant and provided affirmed and undisputed testimony that although the Tenant refused to sign a written tenancy agreement, an oral agreement was still in place with the above noted terms.

The Landlord testified that on May 15, 2017, the Tenant made a partial rent payment for the period of May 15, 2017 - May 31, 2017. The documentary evidence before me from the Landlord indicates that the amount received for the partial payment was \$380.00. The Landlord also testified that the Tenant continued to reside in the rental unit and that no further rent payments were received. The Landlord testified that although she believes that the Tenant may have vacated the rental unit on August 4, 2017, the Tenant left belongings behind and did not provide a forwarding address. The Landlord

also testified that they have not sought, nor do they intend to seek, another Tenant at this time.

### 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 deemed served with the 10 Day Notice on June 5, 2017, 3 days after it was attached to the door of the Tenant's rental unit.

I also find that the Tenant was obligated to pay the monthly rent, on time and in full. In the hearing the Landlord provided affirmed testimony that rent was due on the 15<sup>th</sup> of

each month in the amount of \$750. The Landlord also testified that on May 15<sup>th</sup>, 2017, the tenant made a partial rent payment in the amount of \$380.00, and that no further rent was paid. Although the Landlord testified that they believe that the Tenant vacated the rental unit on August 4, 2017, as they have not been seen, they also stated that the Tenant left behind belongings and did not provide a forwarding address. As a result, I find there is some question regarding whether or not the Tenant actually moved out on August 4, 2017.

Based on the oral tenancy agreement and the Landlord's affirmed and undisputed oral testimony, I find that the Tenant owes \$1870.00 in outstanding rent for the following periods:

- \$370.00 for the rental period commencing on May 15, 2017;
- \$750.00 for the rental period commencing June 15<sup>th</sup>, 2017; and
- \$750.00 for the rental period commencing July 15, 2017.

As the Landlord testified that they have not sought, nor do they intend to seek, another Tenant, I find that there is no additional loss of rent beyond the amounts described above.

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, June 15, 2017.

As some question remains regarding whether or not the Tenant has vacated the rental unit, I find that the Landlord is entitled to an Order of Possession in addition to a Monetary Order in the amount of \$1870.00, the amount owing for unpaid rent as of today's date.

I also find that the Landlord is entitled to recover the \$100 filing fee pursuant to section 72 of the *Act*.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days 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 and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1970.00; \$1870.00 for unpaid rent and \$100 for the recovery of the filing fee. 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Lastly, the Landlord should be aware that there are provisions in the *Act* that guide the Landlord on how to deal with the belongings of the Tenant that were left behind. If they have not already done so, the Landlord is advised to contact an Information Officer at the Branch for information on how to deal with abandonment of personal property.

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 17, 2017

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Residential Tenancy Branch