



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding B&G 7057 Salisbury Apartments Ltd.  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes OPR MNR

#### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on September 18, 2017. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities, and;
- a monetary order for unpaid rent or utilities.

The Landlord, L.S., and the Landlord's Agent, K.K., attended the hearing to provide statements in support of the Landlord's claim. The Tenant also attended the hearing to provide testimony in response to the Landlord's application. Both parties attended the hearing and neither identified any service issues.

The Landlord testified that she is no longer seeking a monetary order because the Tenant has now paid all the outstanding rent. As such, I amend the Landlord's application to reflect this request and will only be considering information as it relates to an order of possession for unpaid rent or utilities.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?

#### Background and Evidence

The Landlord's provided a copy of the tenancy agreement between the parties into evidence. It confirms the tenancy began on March 1, 2002. Rent is currently \$769.44, and is due on the first day of each month. The Landlord holds a security deposit of \$305.00.

The Landlord's testified that on July 1, 2017, the Tenant failed to pay rent when due in the amount of \$769.44. The Landlord further testified that on July 4, 2017, she issued the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) for the unpaid July rent. The Landlord also provided a

copy the Proof of Service document, which shows that she posted the 10 Day Notice to the Tenant's door on July 4, 2017, and that this service was witnessed by P.H.

During the hearing, the Landlord's Agent, K.K., testified that she is the on-site building manager and lives near the Tenant's suite. K.K. stated that she saw the 10 Day Notice attached to the Tenant's door on July 4, 2017. K.K. further stated that she spoke with the Tenant a couple of days after she saw the 10 Day Notice posted to the door, and the Tenant acknowledged receipt of it and said she was not going to pay.

The Landlord testified that she later received full payment for July rent on July 14, 2017, and has subsequently received full rent from the Tenant for August and September of 2017. Documentary evidence from the Landlord shows that receipts were issued to the Tenant for July and August rent for use and occupancy only.

During the hearing, the Tenant stated that she did not receive the 10 Day Notice, and says nothing was ever posted to her door, as the Landlord has indicated. She stated she did not find out about the 10 Day Notice until she got notice that the Landlord was filing for dispute resolution on July 14, 2017. The Tenant stated that she paid July rent when she got the 10 Day Notice on July 14, 2017.

#### Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the Tenant has not paid rent when due (\$769.44 on July 1, 2017). With respect to the service of the 10 Day Notice, I note that the parties disagree on whether or not the Notice was served by posting it to the door of the rental unit. In making a determination on this matter, I have assessed the totality of the evidence before me.

During the hearing, the Tenant stated that the 10 Day Notice was never posted to her door. In contrast to this, the Landlord testified that she posted the notice to the front door on July 4, 2017. She also provided a Proof of Service document showing that this was witnessed by an individual named P.H. Further, the Landlord brought an Agent, K.K, to the hearing who testified that she saw the 10 Day Notice posted to the Tenants door on July 4, 2017, and also that she spoke to the Tenant and was told that she was not going to pay. I find the Landlord has provided more compelling evidence on this matter that is supported by her witness' confirmation. On a balance of probabilities, I find it more likely than not that the Landlord posted the 10 Day Notice to the door of the rental unit on July 4, 2017.

Pursuant to section 88 and 90 of the *Act*, documents delivered in this manner are deemed served after 3 days. I find the Tenant is deemed to have received the 10 Day Notice on July 7, 2017.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the Tenant paid rent in full on July 14, 2017, this is past the 5 days she was allowed, after receiving the 10 Day Notice. As such, I find the Tenant is conclusively presumed to have accepted the end of the tenancy, on July 17, 2017. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

#### Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: September 18, 2017

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Residential Tenancy Branch