



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MNR, OPR

This hearing dealt with an Application for Dispute Resolution (the ‘Application’) that was filed by the Landlord under the Residential Tenancy Act (the ‘Act’), for a Monetary Order for unpaid rent 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 (the ‘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 testified that the Application and the Notice of Hearing were sent to the Tenant on August 4, 2017, by registered mail and provided me with the registered mail tracking number. As a result, I find that the Tenant was duly served on August 9, 2017, five days after the registered mailing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

### **Preliminary matters**

In the hearing the Landlord testified that the Tenant continues to occupy the rental unit, that no payments have been made by the Tenant towards the outstanding rent amount listed on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the ‘10 Day Notice’), and that the Tenant has since failed to pay rent for September, 2017. Subsequently the Landlord requested to amend the application to include loss of rent for September, 2017. The Landlord also requested to amend their application to include recovery of the \$100.00 filing fee and to retain the security deposit, either in part or as a whole, to offset any monetary compensation owed to them by the Tenant.

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. Section 72 of the *Act* states that

the director may order payment or repayment of a fee under section 59(2)(c) [*starting proceedings*] by one party to a dispute resolution proceeding to another party and that in the case of a payment from a Tenant to a Landlord, the amount may be deducted from the security deposit. As a result, I find it reasonable to amend the Landlord's application to include additional unpaid rent for the month of September, 2017, the recovery of the filing fee, and the retention of the Tenant's security deposit, either in part or in full, to offset any monetary compensation owed from the Tenant to the Landlord as a result of this hearing.

#### 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 provided in the documentary evidence before me, a month to month tenancy agreement signed by the Landlord and the Tenant, indicating a monthly rent of \$1,200.00, due on the first day of each month, for a month to month tenancy commencing on July 15, 2014. The Tenancy agreement also indicates that a \$600.00 security deposit was paid by the Tenant to the landlord on July 15, 2014. In the hearing the Landlord testified that these are the correct terms of the tenancy agreement.

The Landlord testified that the Tenant has failed to pay rent in full when due for the Months of May, 2017 – September, 2017, and that as a result, they served the Tenant with a 10 Day Notice. The Landlord provided in the documentary evidence before me, a copy of the 10 Day Notice dated July 13, 2017 in the amount of \$3,600.00, with an effective vacancy date of July 23, 2017. The 10 Day Notice indicates that it was served on the Tenant on July 14, 2017, by attaching a copy to the door of the Tenant's rental unit. The Landlord also provided in the evidence before me, a copy of the a signed Proof of Service of the 10 Day Notice (the "Proof of Service") indicating that the 10 Day Notice was served on the Tenant in the manner described above in the presence of a witness.

The 10 Day 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.

In the hearing the Landlord testified that the Tenant continues to reside in the rental unit, and since serving the 10 Day Notice on the Tenant, the Tenant has not made any payments. The

Landlord testified that as of today's date, the Tenant owes \$6,000.00 in rent for May, 2017 – September, 2017.

### 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 17, 2017, three days after it was attached to the door of the their rental unit. I also find that the Tenant was obligated to pay the monthly rent of \$1,200.00, on time and in full each month.

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 corrected effective date of the 10 Day Notice, July 27, 2017, pursuant to Section 53 of the *Act*.

Therefore, I find that the Landlord is entitled to an Order of Possession and monetary compensation in the amount of \$6,000.00, the amount owing as of the day of this hearing for

unpaid rent. I also find that the Landlord is entitled to recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

Pursuant to section 72(2) of the *Act*, I find that the Landlord is entitled to retain in full, the \$600.00 security deposit paid by the Tenant.

### 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*, the Landlord is entitled to monetary compensation in the amount of \$6,100.00; \$6,000.00 for unpaid rent and \$100.00 for the recovery of the filing fee, and I authorize and order the Landlord to retain the Tenant's \$600.00 security deposit to offset the monetary compensation owed, pursuant to section 72 of the *Act*.

I grant the Landlord a Monetary Order in the amount of **\$5,500.00**; 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.

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 6, 2017

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Residential Tenancy Branch