



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord and Tenant R.B. attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant R.B. (the tenant) stated that he would be representing the interests of both tenants in this matter. The tenant requested that a witness be allowed to provide testimony regarding the tenant's attempt to pay the September 2017 rent. I dismissed the tenant's request as this hearing is only considering the unpaid rent for August 2017.

The tenant acknowledged receipt of the Landlord's Application for Dispute Resolution (the Application) and evidentiary package which were posted to the door of the rental unit on August 18, 2017. The landlord acknowledged receipt of the tenant's evidence. Pursuant to section 88 and 89 of the *Act*, I find both parties have been duly served with these documents.

The landlord entered into written evidence a signed and witnessed Proof of Service Document attesting to the fact that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was personally served to the tenant at 5:00 p.m. on August 02, 2017. In accordance with section 88 of the *Act* I find that the 10 Day Notice, identifying \$800.00 in rent owing for this tenancy, was duly served to the tenant.

At the outset of the hearing the landlord testified that the tenants are still in the rental unit and made a payment of \$800.00 towards the total rent then owing on the 10 Day Notice on August 11, 2017. The landlord testified that this rent was paid late and that he

made it clear to the tenants that he did not wish to continue the tenancy. The landlord testified that he issued a One Month Notice to End Tenancy to the tenants in July of 2017.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

The landlord gave written evidence that this tenancy began on December 01, 2016, with a monthly rent of \$800.00. The landlord testified that rent is due on the first day of the month. The tenancy agreement indicates a security deposit of \$200.00 that the landlord testified he continues to retain in trust. The tenant disputed this amount and testified that he paid an additional amount at a later date.

Copies of the signed 10 Day Notice, dated August 02, 2017, with an effective date of August 12, 2017, and copies of the One Month Notice with a stated effective date of August 31, 2017, were included in both the landlord and tenant's evidence.

A copy of the rent receipts for rent paid from December 31, 2016, to August 11, 2017, are included in the tenant's evidence.

#### Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord and tenant's evidence and testimony, I find the tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on August 12, 2017, the effective date on the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by August 12, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Although section 89(1) of the *Act* does not allow for service by posting the Application to the door of the rental unit, I find that the tenant participated in the hearing and was aware of the matter before him. Pursuant to section 71 of the *Act*, I find that the tenant has been duly served for the purposes of section 89(1) of the *Act*. Therefore, as the landlord has been successful in this application, I allow them to recover their \$100.00 filing fee from the tenants.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary award.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises 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 section 72 of the *Act*, I allow the landlord to retain \$100.00 for the filing fee from the existing security deposit, which is now reduced by that amount.

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