



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MNR, OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request (the “Application”) 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 for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord and one of the Tenants, G.G., whom I shall now refer to as the “Tenant”. All parties provided affirmed testimony and were allowed 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 respondents must be served with a copy of the Application and Notice of Hearing, and I confirmed service of documents as explained below.

The Landlord testified that the Application and the Notice of Direct Request were sent individually to each of the Tenants by registered mail, on August 5, 2017, and provided copies of the registered mail receipts in the evidence before me. The Tenant acknowledged receiving the registered mail on August 15, 2017. As a result, I find that each of the Tenants was duly served on August 15, 2017.

The parties also agreed that the Notice of Hearing was personally served on the Tenants on August 16, 2017. As a result, I find that each of the Tenants was duly served on August 16, 2017.

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

At the outset of the hearing, I pointed out that the address for the Landlord and the Tenant were the same, and requested clarification on the living situation of both the Landlord and Tenants. The parties both agreed that the Tenant and Landlord live in separate self-contained units at

that address, and do not share either a kitchen or bathroom with one another. As a result, I found that the tenancy was not excluded from the *Act* under section 4 and proceeded with the hearing accordingly.

In the hearing the parties agreed that the Tenants continue to occupy the rental unit and that additional rent for September, 2017, is now owed. The Landlord requested to amend the Application to include loss of rent for September, 2017. 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 was made. As a result, I have amended the Application to include outstanding rent for September, 2017.

As the Landlord originally filed for dispute resolution by direct request, they were unable to request recovery of the \$100.00 filing fee on the original application. Now that the Application had proceeded by way of a participatory hearing, I inquired whether the Landlord wished to amend their application to include the recovery of the filing fee. The Landlord indicated that they wished to amend the Application; however, the Tenant raised an objection. I asked the Tenant why they objected to the amendment, and they were unable to provide a reason for their objection, other than to say that they wanted to wait and see what happened in the hearing.

Section 4.7 of the Rules of Procedure state that a respondent may raise an objection to a proposed amendment on the ground that they have not had sufficient time to respond or to submit evidence in reply. The Rules of Procedure also state that the Arbitrator will consider the objection and the principles of natural justice, and determine whether the Application will be heard as amended, dismissed with or without leave to reapply, or adjourned. The amendment sought by the Applicant at the hearing was for the recovery of the filing fee, something I am authorized to grant under section 72 of the *Act*, and is, in practice, normally granted based on the success of an Application for Dispute Resolution and not on anything debated by the parties. I find the objection of the Respondent lacked substance and clarity. As a result, I do not find that additional time was required by the applicant to consider the amendment, or that evidence in response would have been necessary or probative. Therefore I have amended the Application to include recovery of the \$100.00 filing fee.

The Landlord also requested to amend their Application to include the retention of the Tenant's security deposit to offset any monetary compensation owed by the Tenant to the Landlord as a result of this decision. Section 72(2) of the *Act* states that if the director orders a Tenant to pay any amount to the Landlord, the amount may be deducted from any security deposit or pet damage deposit due to the Tenant. As a result, I have amended the Application to include the retention of the security deposit held by the Landlord, in order to offset any monetary compensation owed by the Tenant to the Landlord.

Shortly after 9:20 am, the Tenant exited the hearing without notice. The hearing was still in progress, however, all testimony had been provided by both parties and the parties had been

advised that the Tenancy was ending. At the time the Tenant exited the hearing, I was confirming the e-mail address at which the Landlord wished the copies of the decision and orders to be sent. I continued the remainder of the hearing in the Tenant's absence, during which time I clarified the Landlord's e-mail address, and answered process related questions for the Landlord, prior to concluding the 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 parties agreed in the hearing that a tenancy agreement was signed on or about January 28, 2017, for a month to month tenancy commencing February 1, 2017, at a monthly rent of \$1950.00. The parties agreed that the rent was due on the first of each month and that a security deposit of \$975.00 was paid by the Tenant, which the Landlord still holds. I also have in the documentary evidence before me, a copy of a tenancy agreement

The parties agreed that the Tenant did not pay August rent when due, and that as a result, a 10 Day Notice to end Tenancy (the "10 Day Notice") was issued.

The 10 Day Notice in the documentary evidence before me, dated August 3, 2017, has an effective vacancy date of August 13, 2017, and indicates that it was served on the Tenant personally on August 3, 2017, for the non-payment of August rent in the amount of \$1,950.00. In the hearing the parties agreed that the Tenants were personally served the Notice as described above.

The 10 Day Notice states that the Tenants 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 parties also agreed that the Tenants continue to occupy the rental unit, that no payments have been made towards the rent since the service of the 10 Day Notice, and that additional rent in the amount of \$1950.00 is now owed for September, 2017. The parties agreed that as of September 13, 2017, the date of the hearing, the amount owed for unpaid rent is \$3,900.00.

The Tenant testified that as a result of a medical condition, they were unable to work and could not pay the rent.

### Analysis

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 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 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.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 of the *Act*, I find that the Tenants were served with the 10 Day Notice on August 3, 2017, as agreed by both parties. I also find that the Tenants were obligated to pay the monthly rent of \$1,950.00, on time and in full each month.

Based on the testimony of the parties, I find that the Tenants have 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 Tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, August 13, 2017.

Therefore, I find that the Landlord is entitled to an Order of Possession and monetary award in the amount of \$3,900.00, the amount owing as of today's date 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*, as they were successful in their claim.

Pursuant to section 72(2) of the *Act*, I also find that the Landlord is entitled to retain the Tenants' \$975.00 security deposit in full, to offset the monetary compensation owed by the Tenants to the Landlord. As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$3,025.00; \$100.00 for the recovery of the filing fee and \$3,900.00 in rent, less the amount of the security deposit retained by the Landlord.

### 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 in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$3,025.00. 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 15, 2017

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Residential Tenancy Branch