



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR MNSD MNDC MNR FF

### **Introduction**

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for compensation for money owed or losses under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

SA ('landlord') appeared and testified on behalf of the landlords in this hearing. Both parties 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.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlords' application and evidence. The tenant did not submit any written evidence for this hearing.

The tenant confirmed receipt of the 10 Day Notice on July 6, 2017, with an effective date of July 16, 2017. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on July 6, 2017.

### **Issue(s) to be Decided**

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to monetary compensation for unpaid rent?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover their filing fee for this application?

### **Background and Evidence**

The landlords' agent, SA, testified regarding the following facts. This month-to-month tenancy began on April 1, 2017, with monthly rent in the amount of \$1,500.00. Half the monthly rent is due on the first of every month, with the other half due on the fifteenth of the month. A security deposit was never collected for this tenancy. The tenant continues to reside in the rental unit.

The landlords issued a 10 Day Notice to End Tenancy, dated July 6, 2017 as the tenant failed to pay rent due on July 1, 2017, in addition to the \$350.00 unpaid rent for June 2017. The landlords' agent testified that since the 10 Day Notice was issued to the tenant, the tenant made the following payments towards the outstanding balance of \$1,850.00: \$600.00 on July 14, 2017, \$800.00 on July 20, 2017, and \$350.00 on July 27, 2017.

The landlords' agent testified that the tenant has failed to pay the rent for the months of August 2017 through to the hearing date of October 11, 2017. The landlords are seeking a monetary order for the outstanding rent of \$3,850.00.

The tenant testified in the hearing that he had attempted to pay the landlord the outstanding rent by way of email transfer, but the landlord refused to accept payment.

### **Analysis**

**Section 26** of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the

tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not dispute the fact that he had failed to pay the full \$1,100.00 rent due on July 1, 2017, within five days of being deemed to have received the 10 Day Notice. The tenant made a \$600.00 payment on July 14, 2017, eight days after receiving the 10 Day Notice, and another \$1,150.00 in payments during the month of July 2017. The landlords accepted these payments and issued receipts to the tenant, which were included in the landlords' evidence, indicating that these payments were for use and occupancy, and do not reinstate the tenancy.

The tenant testified in the hearing that he had attempted to pay the remainder of the outstanding rent by email transfer to the landlord, but the landlord refused. The landlords provided evidence for this hearing to support that payments were accepted in July 2017, and the tenant failed to pay the full outstanding rent indicated on the 10 Day Notice within five days of receiving the 10 Day Notice. The tenant did not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on July 16, 2017, the effective date on the 10 Day Notice.

In this case, this required the tenant and anyone on the premises to vacate the premises by July 16, 2017. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*.

The landlords' agent testified that the tenant owes \$3,850.00 at the time of the hearing. Although the tenant testified that the landlord refused to accept his payments, the tenant did not provide sufficient evidence to support that these payments were made, or to support that the landlord refused these payments. In the absence of these things, I find that the landlords are entitled to \$3,850.00 in outstanding rent.

As the landlords were successful in their application, I find that they are entitled to recover the filing fee for this application.

### **Conclusion**

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant(s)**. Should the tenant(s) 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.

I issue a \$3,950.00 Monetary Order in favour of the landlords, which allows the landlords to recover the unpaid rent, as well recover the filing fee for this application

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: October 27, 2017

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Residential Tenancy Branch