



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNR, (Landlord's Application)  
CNR, MNDC, FF (Tenant's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on July 21, 2017 and by the Landlord on July 27, 2017. Both Applications were scheduled to be heard together in this hearing.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent. The Landlord then filed two amendments to her Application for increasing amounts of unpaid rent.

The Tenant applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") and to recover the filing fee from the Landlord. The Tenant also applied for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to this hearing. However, there was no appearance for the Tenant during the 20 minute hearing. Therefore, I turned my mind to the service of the Landlord's Application and the Hearing Package.

The Landlord explained that she had personally served her Application and the Hearing Package to the Tenant with a witness on July 28, 2017. The Landlord testified that she had served the Tenant with the amended Application for the increased monetary claim for unpaid rent by registered mail. The Landlord provided the Canada Post tracking numbers into oral evidence to verify this method of service. These numbers are detailed on the front page of this Decision.

I accept the undisputed evidence before me that the Landlord served her Application to the Tenant personally pursuant to Section 89(1) (a) of the Act. Although the Landlord did not necessarily need to file an amendment for more rent as this could have been amended at the hearing pursuant to Rule 4. 2 of the Residential Tenancy Branch Rules of Procedure, I accept the Tenant was served with the amended monetary claim through the Landlord's amendments to the Application.

As the Tenant failed to appear for the hearing and present her arguments as to why the 10 Day Notice should be cancelled, I dismissed the Tenant's Application without leave to re-apply. I then continued to hear the undisputed evidence of the Landlord as follows.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

#### Background and Evidence

The Landlord testified that this tenancy began on January 1, 2017 for a fixed term of one year set to expire on December 31, 2017. The tenancy agreement provided into evidence shows rent of \$1,550.00 is payable on the first day of each month.

The Tenant paid a \$1,000.00 security deposit to the Landlord on December 22, 2016 which the Landlord still holds in trust. During the hearing, the Landlord requested to offset the security deposit against unpaid rent and recover the filing fee.

The Landlord testified that the Tenant only paid \$850.00 for July 2017 rent. As a result, the Tenant was served with the 10 Day Notice dated July 17, 2017. The Landlord testified the 10 Day Notice was placed in the Tenant's mail slot on July 18, 2017. The Landlord provided a Proof of Service document into evidence which was signed by a witness verifying this method of service. The 10 Day Notice provided into evidence shows a vacancy date of July 28, 2017 due to \$700.00 in outstanding rent for July 2017.

The Landlord testified that the Tenant again paid only \$850.00 in rent for August 2017 and has failed to pay any rent for September and October 2017. Therefore, the Landlord now seeks to end the tenancy and recover rental arrears of \$4,500.00 (\$700.00 + \$700.00 + \$1,550.00 + \$1,550.00).

### Analysis

Section 26(1) of Act requires a tenant to pay rent when due in accordance with their tenancy agreement whether or not the landlord complies with the Act. Section 46(1) of the Act allows a landlord to end the tenancy by issuing the Tenant with a 10 Day Notice.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a 10 Day Notice, a tenant must: pay the overdue rent in order to render it of no effect; or make an Application to dispute it. If the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and they must vacate the rental unit on the effective vacancy date on the 10 Day Notice.

I find the contents of the 10 Day Notice on the approved form comply with the requirements of Section 52 of the Act. I also accept the Landlord's undisputed oral and witness evidence before me that the Tenant was served with the 10 Day Notice by putting it in the Tenant's mail box on July 18, 2017 pursuant to Section 88(f) of the Act.

Section 90(d) of the Act provides that a document placed in a mail box or mail slot is deemed to have been given or served three days later. Therefore, I find the Tenant is deemed to have received the 10 Day Notice on July 21, 2017.

I further find that the vacancy date of the 10 Day Notice is automatically corrected to be effective on July 31, 2017 pursuant to Section 53 of the Act, which I find is the date the tenancy ended.

As the effective vacancy date for this tenancy has now passed and the Tenant is occupying the rental unit in rental arrears, I find the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate voluntarily.

I also accept the undisputed evidence that the Tenant is in rental arrears for this tenancy in the amount of \$4,500.00, and award this amount to the Landlord.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$4,600.00

As the Landlord has been holding the Tenant's \$1,000.00 security deposit, pursuant to Section 72(2) (b) of the Act, I order the Landlord to retain this amount in partial satisfaction of the claim awarded.

As a result, the Landlord is granted a Monetary Order for the remaining balance of \$3,600.00. This order must be served on the Tenant and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment.

Copies of the above orders for service and enforcement are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

### Conclusion

The Tenant's Application is dismissed without leave to re-apply as she failed to appear for this hearing. The Tenant has failed to pay rent. Therefore the Landlord is issued with a two day Order of Possession to end the tenancy. The Landlord may keep the Tenant's security deposit and is granted a Monetary Order for the balance owed of \$3,600.00.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 06, 2017

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Residential Tenancy Branch