



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord attended, supported by his spouse, and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated July 15, 2017 was served on the tenant by posting on the rental unit door on that same day. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on July 18, 2017, three days after posting.

The landlord testified that the landlord's application for dispute resolution dated August 3, 2017 and the landlord's amendment to the application dated August 18, 2017 were served on the tenant by registered mail sent on August 18, 2017. The landlord provided a Canada Post tracking number as evidence of service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application and amendment on July 23, 2017, five days after mailing.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenant made some payment that was accepted for use and occupancy only and other amounts have come due. The landlord said that the total arrears as of the date of the hearing is \$2,450.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the total arrears amount changing when additional rent becomes due and partial payment is made is reasonably foreseeable, I amend the landlord's Application to decrease the landlord's monetary claim from \$3,350.00 to \$2,450.00.

#### Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation as claimed?

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

#### Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This periodic tenancy began on or about March, 2010 when the landlord purchased the rental property and the existing tenancy. The monthly rent is \$850.00 payable on the 15<sup>th</sup> of each month. No security deposit is held by the landlord.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$2,250.00, the amount initially sought in the 10 Day Notice. The landlord testified that while the tenant has made partial payments in the month of September, the payments were only accepted for use and occupancy. The landlord said that the total arrear is \$2,450.00 as at the date of the hearing.

#### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$850.00. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, 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 28, 2017. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$2,450.00. I issue a monetary award for unpaid rent owing of \$2,450.00 as at October 27, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service 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.

I issue a monetary order in the landlord's favour in the amount of \$2,550.00, which allows the landlord to recover unpaid rent and the filing fee for their application:

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: October 27, 2017

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Residential Tenancy Branch