



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

OPR MNR

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held, by teleconference, on November 24, 2017. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The landlord's agent (the "Agent") attended the hearing and provided testimony. The Tenant did not attend the hearing.

The Agent testified that he gave a copy of the Application Package, along with supporting documentary evidence, to the Tenant on September 23, 2017. I find the Tenant received the package on this day.

The Agent stated that the Tenant has now paid all of her outstanding rent to date, and he no longer needs a monetary order. As such, I amend the Landlord's application accordingly.

The Agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?

### Background and Evidence

The Agent testified that current rent is \$900.00 per month and is due on the first day of each month. The Landlord holds a security deposit in the amount of \$440.00.

The Agent testified that the Tenant owed \$1,120.00 in unpaid rent at the time he issued the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The Agent testified that he served the 10 Day Notice by posting it to the Tenant's door on September 2, 2017. Service of this document was witnessed by a third party. The Agent testified that the Tenant has paid rent in the following manner:

<b>Date</b>	<b>Item</b>	<b>Amount Due</b>	<b>Amount Paid</b>	<b>Accrued Balance Owning</b>
August 1, 2017	Rent Due	\$900.00	\$0.00	\$900.00
August 29, 2017	Rent Payment		\$680.00	\$220.00
September 1, 2017	Rent Due	\$900.00	\$0.00	\$1,120.00
September 3, 2017	Rent Payment(s)		\$860.00	\$260.00
September 23, 2017	Rent Payment		\$260.00	\$0.00
October 1, 2017	Rent Due	\$900.00	\$0.00	\$900.00
October 2, 2017	Rent Payment		\$640.00	\$260.00
October 14, 2017	Rent Payment		\$260.00	\$0.00
November 1, 2017	Rent Due	\$900.00	\$900.00	\$0.00
<b>Total Accrued Balance</b>				<b>\$0.00</b>

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

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(1) 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, under section 46(4) of the *Act*, 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, as per section 46(5) of the *Act*.

Based on the chart above, I find that the Tenant owed \$1,120.00, at the time the 10 Day Notice was issued, on September 2, 2017. The agent attached a copy of the 10 Day Notice to the Tenant's front door. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on September 5, 2017.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the Tenant paid some of the total balance on September 3, 2017, the evidence before me indicates that at the end of the 5 day period, on September 10, 2017, the tenant had not paid rent in full, as there was still \$260.00 owing at that time. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

### Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: November 24, 2017

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Residential Tenancy Branch