



# 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 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 the recovery of the filing fee as well as an Order of Possession.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent was provided 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 Respondent must be served with a copy of the Application, the Notice of Direct Request Proceeding, and the Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Application and the Notice of Direct Request Proceeding were sent to the Tenant by registered mail on October 20, 2017, and provided a copy of the registered mail receipt. As a result, I find that the Tenant was deemed served with these documents on October 25, 2017, five days after they were sent by registered mail.

The Agent also testified that the Notice of Hearing was sent to the Tenant by registered mail on November 16, 2017, and provided a copy of the registered mail receipt. As a result, I find that the Tenant was deemed served with the Notice of Hearing on November 21, 2017, five days after it was sent by registered mail.

At the request of the Agent, copies of the Decision and any applicable Orders will be e-mailed to them at the e-mail address provided in the hearing.

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 identified that the Applicant listed on the Application and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) is not the Landlord listed in the tenancy agreement. The Agent testified that the Applicant is the owner of the property rented by the Tenant and that the person listed as the Landlord in the tenancy agreement is the former agent of the Applicant. The Agent submitted documentary evidence establishing that the Applicant owns the property where the Tenant’s rental unit is located, that the previous agent listed as the Landlord in the tenancy agreement was an employee of the property management company previously hired by the Applicant to manage the Tenant’s rental unit, and proof that the Agent is currently authorized to act as an agent for the Applicant.

As a result of the above and in the absence of evidence to the contrary, I find that the Applicant meets the definition of a Landlord pursuant to section 1 of the *Act*. As a result, they will be referred to as the “Landlord” in this decision.

In the hearing the Agent requested to amend the Application to include the additional loss of rent for November and December, 2017, and retention of the security deposit paid by the Tenant to offset the outstanding rent owed. 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. Section 72 of the *Act* also states that if the director orders a tenant to pay any amount to a landlord as part of a dispute resolution proceeding, the director may order that this amount be deducted from any security deposit or pet damage deposit due to the tenant. As a result of the above, the Application is therefore amended to include additional loss of rent and the retention of the Tenants security deposit to offset any money owed by the Tenant to the Landlord pursuant to the *Act* and the Rules of Procedure.

### 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 and the recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

### Background and Evidence

The tenancy agreement in the documentary evidence before me, signed December 1, 2015, indicates that the one year fixed-term tenancy began December 1, 2015. The tenancy agreement states that rent in the amount of \$1,300.00 is due on the first day of each month and that a security deposit in the amount of \$650.00 was paid by the Tenant. The Agent testified that these are the correct terms of the tenancy agreement and that the security deposit is still held by the Landlord.

The Agent testified that the Tenant did not pay rent as required for September or October, 2017, and that as a result, a 10 Day Notice was served.

The 10 Day Notice in the documentary evidence before me, dated October 3, 2017, has an effective vacancy date of October 18, 2017, and states that as of October 1, 2017, the Tenant owed \$2,600.00 in outstanding rent. The Agent testified that the 10 Day Notice was sent to the Tenant by registered mail on October 3, 2017, and submitted a copy of a registered mail receipt and a signed Proof of Service Notice to End Tenancy (the "Proof of Service") indicating that the 10 Day Notice was served in the manner described above.

The Agent stated that since being served the 10 Day Notice, the Tenant has not paid any rent and currently owes \$5,200.00 in unpaid rent; \$1,300.00 per month for September, 2017 – December, 2017.

### Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

**46** (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was deemed served with the 10 Day Notice on October 8, 2017, five days after it was sent by registered mail. I also find that the Tenant was obligated to pay rent in the amount of \$1,300.00, on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenant has 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 Tenant is 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, October 18, 2017, and the Landlord is therefore entitled to an Order of Possession.

Based on the evidence and testimony before me and in the absence of evidence to the contrary, I find that the Tenant owes \$5,200.00 in outstanding rent. Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to the recovery of the \$100.00 filing fee and to retain the security deposit paid by the Tenant in full, to offset the outstanding rent owed.

As a result of the above, I find that the Landlord is entitled to a Monetary Order in the amount of \$4,650.00; \$5,200.00 for outstanding rent owed as of the date of the hearing, less the \$650.00 security deposit, plus \$100.00 for the recovery of the filing fee.

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 \$4,650.00. 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: December 11, 2017

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Residential Tenancy Branch