



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-DR, FFL

### Introduction

On December 20, 2017, an adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) considered the landlord's application for dispute resolution using the Residential Tenancy Branch's direct request process. As the adjudicator did not believe there was sufficient information provided whereby she could make a decision on the basis of an *ex parte* hearing of this matter, she adjourned the landlord's application to a participatory hearing in her Interim Decision of December 20, 2017.

I have been delegated authority to consider the landlord's application for the following in this participatory hearing:

- 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 his filing fee for this application from the tenant pursuant to section 72.

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.

At the commencement of the hearing, the tenant testified that he left the rental unit on December 1, 2017, and that the police have required that he not return there. Since he has not been back to the rental unit since he left on December 1, 2017, he could provide little testimony regarding the landlord's attempts to serve documents to him at the rental unit. He also testified that he did not notify the landlord that he had vacated the rental unit. He said that his female friend remains in the rental unit, advising him that she would look after the remainder of his tenancy. He also testified that he understands that she is planning to vacate the rental unit by January 24, 2018. He said

that he became aware of this hearing when he contacted the Residential Tenancy Branch.

The landlord gave undisputed sworn testimony supported by a witnessed and signed Proof of Service Document that he posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on December 4, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenant has been deemed served with the 10 Day Notice at the address where the landlord believed he was still residing on the third day after its posting, December 7, 2017.

The landlord testified that he sent a copy of his application for dispute resolution to the tenant at the rental unit where he then believed the tenant to be residing by way of the Residential Tenancy Branch's direct request process by registered mail on December 19, 2017. He sent the tenant a copy of the Interim Decision and the Notice of Reconvened Hearing by registered mail on December 22, 2017. He provided Canada Post Tracking Numbers to confirm these registered mailings. Although the tenant had not received these packages because he was no longer living there at that time, the tenant testified that he had not notified the landlord of his change in address by those dates. As such and in accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the documents sent by registered mail on the fifth day after their registered mailing.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

This one-year fixed term tenancy was signed by the tenant on June 14, 2017, and by the landlord on June 15, 2017. The parties agreed that the tenant's female friend is not a party to this fixed term tenancy agreement, a copy of which was entered into written evidence by the landlord. The term of this fixed term tenancy is to run from July 16, 2017 until July 15, 2018. Monthly rent is set at \$1,500.00. Initially, rent was due on the 15<sup>th</sup> of each month. However, as of August 15, the parties varied the due date to the first of each month after the tenant made a partial payment of his rent for the last two weeks of August. Thus, by September 1, 2017, monthly rent of \$1,500.00 was payable

in advance on the first of each month. The landlord continues to hold the tenant's \$750.00 security deposit, paid on June 15, 2017.

The landlord's 10 Day Notice identified \$1,500.00 as owing. The parties confirmed that no payments have been made to the landlord for this tenancy for December 2017 or January 2018. As the landlord has not received any application from the tenant to cancel the 10 Day Notice, because the tenant was not living at the rental unit when the 10 Day Notice was issued, there is a conclusive presumption that the tenancy ended on December 16, 2017, the effective date of that Notice.

The tenant made a special point of emphasizing that he accepts full responsibility for the lack of payment of rent to the landlord, who he observed has treated him fairly throughout this tenancy.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on January 24, 2018, by which time the tenant **and all occupants of the rental unit** will have surrendered vacant possession of the rental unit to the landlord.
2. The tenant agreed to pay the landlord a total of \$3,000.00 by a series of post-dated cheques in installments to be arranged by the parties.
3. Both parties agreed that this settlement agreement constituted a final and binding resolution of all monetary issues arising out of this tenancy with the exception of the return of the security deposit which is to be dealt with in accordance with the *Act*, and that they entered into this settlement agreement of their own free will and without any element of force or coercion.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the rental premises are not vacated in accordance with their agreement by 1:00 p.m. on January

24, 2018. The landlord is provided with these Orders in the above terms and the tenant must be served with an Order in the event that the tenant and all occupants do not vacate the premises by the time and date set out in their agreement. Should the tenant and any occupants 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.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$3,000.00. I deliver this Order to the landlord in support of the above agreement for use in the event that the tenant does not abide by the terms of the above settlement. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 12, 2018

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Residential Tenancy Branch