



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPUM-DR, FFL

### 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, an Order of Possession, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenant did not attend. The Landlord 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 and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Landlord provided a Proof of Service of Notice of Direct Request Proceeding, a registered mail receipt, and affirmed testimony that the Application, the Notice of Direct Request, and the evidence package were sent to the Tenant by registered mail on November 6, 2017. The Landlord also provided a Proof of Service, a registered mail receipt, and affirmed testimony that the Notice of Hearing was sent to the Tenant by registered mail on November 11, 2017. As a result, I find that the Tenant was deemed served the Notice of Direct Request and the Application on November 11, 2017, and the Notice of Hearing on November 16, 2017, five days after they were sent by registered mail.

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. At the request of the Landlord, copies of the decision and any applicable orders will be e-mailed to them at the address provided in their Application.

### Preliminary matters

In the hearing the Landlord testified that the Tenant continues to occupy the rental unit and that additional rent is now owed. The Landlord requested to amend the Application to include this additional loss of rent as well as the retention of the Tenant's security deposit to offset any outstanding rent or utility amounts 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. As a result, I have amended the Application to include the additional outstanding rent and retention of the Tenant's security deposit.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession pursuant to sections 46 and 55 of the *Act*?

Are the Landlords entitled to a Monetary Order and to retain all or a portion of the Tenant's security deposit pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the tenancy began on July 1, 2017, and that rent is \$1,800.00 per month. Although the day on which rent is due is not indicated in the tenancy agreement, the Landlord testified that the understanding between themselves and the Tenant is that rent is due on the first day of each month and that an addendum which forms part of the tenancy agreement was signed between themselves and the Tenant indicating that the Tenant would be charged a late fee of \$20.00 per month if rent was not paid in full by the first day of each month. The tenancy agreement also indicates that a security deposit was paid by the Tenant in the amount of \$900.00, which the Landlord testified they still hold.

The tenancy agreement states that utilities are not included in the rent and the Landlord testified that an addendum which forms part of the tenancy agreement was signed regarding the payment of these utilities. The Landlord testified that according to the addendum, the Tenants were responsible to pay the landlord for 70% of the water, electric, and natural gas bills.

The Landlord testified that although the Tenant paid the rent as required on the first day of each month for the first two months of the tenancy, the Tenant made late and/or incomplete rent payments thereafter. As a result, the Landlord testified that multiple notices to end tenancy were served on the tenant for the non-payment of rent and utilities.

The first 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") in the documentary evidence before me is dated October 2, 2017, has an effective vacancy date of October 20, 2017, and indicates that as of October 1, 2017, the Tenant owed \$1,800.00 in outstanding rent and \$97.00 in utilities. The Landlord testified that the 10 Day Notice was posted to the door of the Tenant's rental unit on

October 13, 2017, and submitted a witnessed and 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 Second 10 Day Notice dated January 7, 2018, has an effective vacancy date of January 19, 2018, and indicates that as of January 1, 2018, the Tenant owed \$2,650.00 in rent. The Landlord testified that the 10 Day Notice was posted to the door of the Tenant's rental unit on January 18, 2018.

The Landlord testified that although the Tenant made several partial rent and utility payments after the issuance of the 10 Day Notice dated October 2, 2017, the Tenant failed to pay the outstanding rent owed in full within five days of being served with the 10 Day Notice. Further to this, the Landlord testified that the Tenant still owes \$2,750.00 in outstanding rent and \$100.00 in late fees.

The Landlord testified that the Tenant also owes \$431.98 in outstanding utilities; \$231.00 for natural gas up to and including the period of December 31, 2017, and \$200.98 for electricity up to and including the period of December 5, 2017. The Landlord testified that the Tenant will also owe additional money for water usage from November 5, 2017, onwards, and for electricity and natural gas usage after the above noted periods. However, the Landlord stated that these bills have not yet been received.

The Landlord testified that along with courtesy e-mails to the Tenant regarding the payment of rent and utilities, they also mailed copies of the utility bills and demand letters to the Tenant.

#### 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 first 10 Day Notice on October 16, 2017, three days after it was attached to the door of their rental unit. Based on the undisputed testimony of the Landlord and the documentary evidence before me, I also find that the Tenant was obligated to pay the monthly rent of \$1,800.00, in full, on the first day of 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 (5) days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five (5) 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 corrected effective date of the 10 Day Notice, October 26, 2017, and the Landlord is therefore entitled to an Order of Possession. As the effective date of the 10 Day Notice has passed and the Tenant has not paid rent for January, 2018, the Order of Possession will be effective Two days after service on the Tenant.

Although a second 10 Day Notice was before me for consideration, as I have already found above that the tenancy is ended in accordance with the 10 Day Notice dated October 2, 2017, I have not made any findings of fact or law in relation to the 10 Day Notice dated January 7, 2018.

Based on the Landlords undisputed and affirmed testimony, I find that the Tenant owes \$2,750.00 in outstanding rent, \$100.00 in late fees, and \$431.98 in outstanding utilities. Pursuant to section 72 of the *Act*, I also find that the Tenant is entitled to the recovery of the \$100.00 filing fee and to retain the \$900.00 security deposit paid by the Tenant, in full, in partial recovery of the above noted outstanding amounts. As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$2,481.98.

### 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 \$2,481.98. 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: January 25, 2018

---

Residential Tenancy Branch