



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AMACON NORTH ROAD DEVELOPMENT PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM, FFL

### Introduction

This hearing dealt with the Landlords adjourned Direct Request Application filed under the Residential Tenancy Act, (the “Act”), due to clarification need regarding service of the 10-day Notice to end tenancy. The Landlord is seeking an order of possession, a monetary order for unpaid rent and an order to recover the cost of filing the application from the tenant.

The Landlord attended the hearing. The Landlord was affirmed to be truthful in his testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. The Landlord testified that he served the Tenant with the Notice of Hearing documents by Canada Post Registered mail, sent on April 27, 2018, a Canada post tracking number was provided as evidence of service. I find that the Tenant has been duly served with the Notice of Hearing documents in accordance with section 90 of the Act.

The Landlord was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?

- Is the landlord entitled to monetary compensation for unpaid rent?
- Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

The Landlord testified that the tenancy began on December 1, 2017, as a month to month tenancy. Rent in the amount of \$1,350.00 is to be paid by the first day of each month, and that the Tenant had paid the Landlord a \$675.00 security deposit.

The Landlord testified that he served the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) to the Tenant on April 3, 2018, by posting it to the tenant's door. The Notice has an effective date of April 13, 2018, and an outstanding rent amount of \$670.00 for April 2018. The Landlord also testified that the Tenant had not paid the outstanding amount indicated on the Notice within five days or served the Landlord with an application to show he had disputed the Notice.

The Landlord testified that the Tenant owes a total of \$820.00; comprised of \$670.00 for April and \$150.00 for May's rent. The Landlord is requesting an order of possession and a monetary order for the outstanding rent.

### Analysis

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

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

#### **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.
- (2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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 find that the Tenant did not pay the rent or dispute the Notice, within the legislated timeline pursuant to section 46 of the *Act*. Therefore, the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

I find that the landlord has established an entitlement to an Order of Possession and a monetary award for the unpaid rent owing for April and May 2018.

Pursuant to sections 55 and 67 of the *Act*, I grant the Landlord an order of possession and a monetary order in the amount of \$245.00, which is comprised of \$820.00 for the outstanding rent due at the end of the tenancy, less the \$675.00 that the Landlord holds as a security deposit. The Landlord is authorized to retain the Tenant's security deposit as partial satisfaction of this award.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee.

<u>Rent</u>	<u>Due</u>	<u>Paid</u>	<u>Outstanding</u>
April 2018	\$1,350.00	-\$680.00	\$670.00
May 2018	\$1,350.00	-\$1,200.00	\$150.00
Total Outstanding Rent			\$820.00
Filing Fee			\$100.00
			\$920.00
Security Deposit Held			-\$675.00
<b>Due</b>			<b>\$245.00</b>

### Conclusion

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a Monetary Order in the amount of \$245.00 for the outstanding rent and to recover the filing fee for this application. 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: May 29, 2018

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Residential Tenancy Branch