



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPRM-DR

### Introduction

On April 17, 2018, the Landlord submitted an Application for Dispute Resolution by Direct Request under the *Residential Tenancy Act* ("the Act"). The Landlord requested an Order of Possession due to unpaid rent and a Monetary Order to recover the unpaid rent. The Landlord's evidence was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 17-minute hearing. The Landlord testified that the Notice of Hearing was sent to the Tenant by registered mail on May 2, 2018. The Landlord provided the tracking number for the registered mail and regardless of a Canada Post notice card being left at the Tenant's door, the Notice of Hearing package was not picked up by the Tenant. I find that the Tenant is deemed to have received the Notice of Hearing on May 7, 2018, in accordance with Sections 89 and 90 of the Act.

The Landlord was provided an opportunity to present their affirmed testimony, written and documentary evidence 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.

### Issues to be Decided

Should the Landlord be granted an Order of Possession?

Should the Landlord be granted a Monetary Order for unpaid rent?

### Background and Evidence

The Landlord provided the following undisputed testimony:

The month-to-month tenancy began on March 1, 2015 with the rent of \$750.00 due on the first of each month. The Landlord currently holds the \$375.00 security deposit.

The Tenant failed to pay her rent on November 1, 2017, therefore, a Ten-Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 13, 2017, (the "Notice") was served on the Tenant, by the Landlord, by posting it to her door on November 17, 2017. This was witnessed by the property manager and a copy of the Notice and a Proof of Service document was submitted as evidence.

The Landlord delayed making an Application for Dispute Resolution as the Tenant had made various promises to pay the rent and/or move out of the rental unit and also provided some sad stories that caused the Landlord to give her many opportunities to continue the tenancy. However, as of this date, the Landlord has not received any rent or payment for utilities from the Tenant since October 2017. The Tenant is still living in the rental unit and the Landlord is requesting an Order of Possession and a Monetary Order for five months of unpaid rent (regardless of the Tenant not having paid rent for seven months) for a total of \$3,750.00.

### Analysis

Based on undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$750.00 by the first day of each month and that the Tenant has not paid rent for November 2017 through to March 2018. As the Tenant is required to pay rent pursuant to section 26(1) of the Act, I find that the Tenant must pay \$3,750.00 in outstanding rent to the Landlord (the amount claimed by the Landlord).

Section 46 of the Act authorizes a Landlord to 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. The Tenant, within 5 days after receiving the notice, may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution. If the Tenant does not pay the rent or make an Application for Dispute Resolution, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

On the basis of the undisputed evidence I find that the Notice was posted at the rental unit on November 13, 2017.

Section 90 of the Act specifies that a document that is posted on a door is deemed to be received on the third day after it is posted. I, therefore, find that the Tenant received the Notice on November 16, 2017.

As the Tenant is deemed to have received this Notice on November 16, 2017, the earliest effective date of the Notice would be November 27, 2017. However, I find that November 28, 2017, is the effective vacancy date, as indicated on the Notice by the Landlord.

I have no evidence before me that the Tenant paid their rent or applied for Dispute Resolution; therefore, I find that the Tenant accepted that the tenancy has ended on November 28, 2017. For the above reasons and because the Tenant is still occupying the rental unit, I grant the Landlord an Order of Possession.

### Conclusion

I am granting the Landlord an Order of Possession to be effective two days after notice is served 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.

The Landlord has established a monetary claim for unpaid rent in the amount of \$3,750.00. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$375.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$3,375.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 25, 2018

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Residential Tenancy Branch