



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, OPR, MNRL-S, FFL

### Introduction

This hearing dealt with cross applications filed by the parties. On June 7, 2018, the Tenant applied for a dispute resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act* and seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*.

On Jun 15, 2018, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for unpaid rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent, and to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing and K.N. attended on behalf of the Tenant as well. M.M. attended the hearing on behalf of the Landlord. All in attendance provided a solemn affirmation.

K.N. advised that the Notice of Hearing package was placed in the Landlord's mailbox on July 7, 2018. Section 89 of the *Act* states that this is not an approved method to serve such a document; however, M.M. confirmed that this package was received and he was prepared to proceed. As this is not prejudicial to the Landlord, I determined that the Dispute Resolution proceeding could continue.

M.M. advised that the Landlord served the Notice of Hearing package to the Tenant by registered mail on June 19, 2018 and she provided a receipt to confirm this. In accordance with sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was served the Landlord's Notice of Hearing package.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral

and written submissions before me; 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 Tenant entitled to have the Notice cancelled?
- Is the Tenant entitled to have the Landlord comply with the *Act*?
- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to retain the security deposit held?
- Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

M.M. advised that the tenancy started on October 8, 2017 and that rent was established at \$1,000.00 per month, due on the first of each month. A security deposit of \$500.00 was collected. K.N. confirmed these details.

M.M. submitted that the Tenant had been in arrears for June 2018 rent and a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) was served to the Tenant on June 2, 2018 by posting to the door. K.N. confirmed these details. In accordance with section 88 of the *Act*, I am satisfied that the Tenant was served with the Notice.

The Notice indicated that \$500.00 was outstanding on June 1, 2018. The Tenant advised that he did not pay the balance of the rent and he did not provide a reason for not doing so, but he understood that this jeopardized his tenancy. In his Application, he indicated that his “roommate[sic] abandoned the apartment, the landlord kept my pwd funds” and this was the reason why he requested the Order for the Landlord to comply with the *Act*. However, he did not provide any clarity in his testimony in regard to this written statement.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the Act states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the Act, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the Act allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 67 of the Act allows a Monetary Order to be awarded for damage or loss when a party does not comply with the Act.

As outlined above, the undisputed evidence is that the rent for June 2018 was not paid in full when it was due, nor was it paid within 5 days of the Tenant being deemed to have received the Notice. As the Landlord's Notice is valid and as the Tenant has not complied with the Act, I uphold the Notice and find that the Landlord is entitled to an Order of Possession. I also find that the Landlord is entitled to a Monetary Order in the amount of **\$500.00**, which is comprised of rent owed for the balance of June 2018 rent.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of section 72 of the Act, I allow the Landlord to retain this \$500.00 from the security deposit in partial satisfaction of the debt outstanding.

Pursuant to sections 67 and 72 of the Act, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

Item	Amount
June 2018 – Outstanding rent	\$500.00
Recovery of Filing Fee	\$100.00
Security Deposit	-\$500.00
<b>Total Monetary Award</b>	<b>\$100.00</b>

Conclusion

I grant an Order of Possession to the Landlord **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.

The Landlord is provided with a Monetary Order in the amount of **\$100.00** 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: July 30, 2018