



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LD INVESTMENT CDN LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL OPRM-DR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:23 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent G.M. (herein referred to as "the landlord") attended the hearing on behalf of the corporate landlord and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that he had served the respondent with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that he had served the tenant with the notice of this hearing, his application and evidentiary materials by Canada Post registered mail on June 14, 2018. The landlord submitted into documentary evidence the registered mail receipt with the tracking number as proof of service. With the landlord's agreement, I accessed the Canada Post website to confirm that the notice of this hearing had been

delivered and signed as received by the tenant. Therefore, I find that the tenant was served with the notice of this hearing in accordance with section 89 of the *Act*.

#### Preliminary Issue – Amendment of Landlord's Application

At the outset of the hearing, the landlord advised that the tenant had made a payment to correct the rental arrears on June 27, 2018. As well, the landlord had received payment for "use and occupancy only" from the tenant for the month of July 2018. The tenant had also provided the landlord with a cheque for "use and occupancy only" of the month of August 2018. The landlord stated that he was unsure if the tenant's cheque for August would clear or if it would be returned for insufficient funds. Therefore, the landlord requested to amend his application to withdraw his claim for a monetary order as there were currently no outstanding payments owed by the tenant. As the landlord sought to withdraw his claim, he would be at liberty to reapply in future in the event the tenant's payment for August 2018 was returned for insufficient funds. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to dismiss his claim for a monetary order, with leave to reapply.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recovery of the filing fee for this application from the tenant?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The landlord submitted a written tenancy agreement into documentary evidence, and confirmed the following information pertaining the tenancy agreement. The tenancy began on November 1, 2012 as a one-year fixed-term tenancy. At the end of the fixed-term, the tenancy converted to a month-to-month tenancy. Monthly rent of \$957.00 is due on the first of the month. The tenant paid a security deposit of \$415.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord testified that the tenant failed to pay rent for June 2018 when it was due on June 1, 2018. The landlord served the tenant with a 10 Day Notice to End Tenancy for

Unpaid Rent (10 Day Notice) dated June 2, 2018 by leaving it in the tenant's mailbox on that same day. An effective date for vacancy of the rental unit of June 15, 2018 was indicated on the 10 Day Notice. The landlord submitted a copy of the 10 Day Notice into documentary evidence.

The landlord testified that the tenant did not pay all the rent owing within five days of receiving the 10 Day Notice. The tenant made a payment for the rental arrears on June 18, 2018, however, this cheque was returned due to insufficient funds. The tenant then provided another payment on June 27, 2018 to correct the rental arrears up to that date. The tenant subsequently made payments to the landlord equivalent to rent for the months of July and August 2018 as the tenant continues to occupy the rental unit. The landlord testified that the tenant has been provided with receipts noted with "for use and occupancy only" for payments made after the 10 Day Notice was issued, while the landlord awaited this hearing date.

### Analysis

In considering this matter, I have reviewed the landlord's 10 Day Notice to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord's agent; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

No evidence was presented at the hearing that the tenant had a right under the *Act* to deduct all or a portion of the rent.

Therefore, I find that the tenant was obligated to pay monthly rent in the amount of \$975.00, as established in their agreed upon tenancy agreement.

Section 46 of the *Act* provides, in part, the following:

- 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 note that the 10 Day Notice submitted into evidence clearly outlines at the top of the first page that the tenant may face eviction if the tenant does not pay the rent to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch. I also note that second page also states that if the tenant does not do either, they are conclusively presumed to have accepted the end of the tenancy and they must move out.

In this matter, the landlord served the tenant with the 10 Day Notice by leaving it in his mailbox. As such, according to section 90 of the Act, the tenant was deemed to have received the notice on the third day after it was left in the mailbox, which would have been June 5, 2018.

I accept the testimony provided by the landlord that the tenant did not pay the full amount of rent identified as owing on the 10 Day Notice dated June 2, 2018 within five days of the deemed receipt date of the notice, June 5, 2018, nor did the tenant apply to dispute the 10 Day Notice within five days of the deemed receipt date of the notice as provided under section 46(4) of the *Act*.

In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of this tenancy on the stated effective date of the notice. In this case, this required the tenant to vacate the premises by June 15, 2018. As that has not occurred, I find that the landlord is entitled to an Order of Possession.

Given that the landlord has testified that the tenant has paid for use and occupancy of the rental unit until August 31, 2018, the Order of Possession provided to the landlord will be for that date.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee for this application from the tenant. In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlord retain \$100.00 of the

tenant's security deposit of \$415.00 in satisfaction of the filing fee to be paid to the landlord.

Conclusion

I grant an Order of Possession to the landlord effective on August 31, 2018 at 1:00 p.m. Should the tenant or anyone 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.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible.

Pursuant to section 72 of the *Act*, I find that the landlord is entitled to the recovery of the filing fee. I order that the landlord retain \$100.00 from the tenant's security deposit in satisfaction of the recovery of the filing fee.

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: August 09, 2018

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Residential Tenancy Branch