



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord for a monetary order for rent arrears and for an Order of Possession due to Unpaid Rent.

The Landlord’s agent appeared for the scheduled hearing on behalf of the Landlord, who recently purchased the building and assumed the tenancy agreements with the tenants residing in the building.

The Tenant did not attend this hearing, although I left the teleconference hearing connection open for 10 minutes in order to enable the Tenant to call into this teleconference hearing scheduled for 9:30 a.m.

The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed 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 Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord testified that the Notice of Hearing was served by registered mail on August 1, 2018 and provided a Canada Post confirmation number; she stated that the Tenant indicated to her that he would not be calling in for the hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

### Issue to be Decided

Is the Landlord entitled to an Order of Possession for Unpaid Rent, pursuant to sections 55 and 46 of the Residential Tenancy Act ("Act")?

Is the Landlord entitled to a monetary order for payment of rent arrears, pursuant to section 67 of the Act?

### Background and Evidence

The tenancy began July of 2015 for \$825.00 per month; a copy of the tenancy agreement was submitted into evidence. Current rent is \$838.00 per month, payable on the 1<sup>st</sup> of each month. A security deposit of \$387.50 was paid to the Landlord.

A 10-Day Notice to End Tenancy for Unpaid Rent was served on the Tenant by posting it on his door on July 13, 2018. The Notice was dated July 13<sup>th</sup>, with an effective date of July 24, 2018. The arrears was at \$838.00 as of July 1, 2018. Payments have been made since that time and the current arrears is \$463.00 for September.

The Landlord states that the Tenant entered into a mutual agreement to end the tenancy effective October 15, 2018 and she requests an Order of Possession effective that date. The Tenant promised her that the Ministry would be catching up the rent arrears in a payment on September 26<sup>th</sup>, but she requests a monetary order to enforce that payment if it is not made.

### Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply. I am satisfied that the Tenant was properly served with notice of this hearing and chose not to attend; the hearing proceeded in his absence.

A tenant is obligated to pay rent when it is due, pursuant to section 26 of the Act:

**26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the*

*tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Under section 46 of the Act, a landlord may end a tenancy with 10 days written notice for unpaid 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 have reviewed the Notice to End Tenancy and find that it complies with section 52 in form and in content; section 52 requires that the notice be in writing and be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, the grounds for terminating the tenancy and be in the approved form. The Notice was served by posting it on the Tenant's door in accordance with section 88 and is deemed received three days later, on July 16, 2018.

There is no evidence before me to suggest that the Tenant filed a dispute notice or paid the arrears completely. Accordingly, the Tenant is conclusively presumed to have accepted the notice to end the tenancy. The Landlord is granted an Order of Possession; as the Landlord testified that the parties have agreed to a move-out date, I am ordering that it take effect as of noon on October 15, 2018 as agreed between the parties.

I am satisfied that the Landlord has proven rent arrears in the sum of \$463.00. A monetary order will be issued in that amount and if the Tenant does not arrange for payment, the Landlord may serve this Order on the Tenant and may then file it in the Small Claims Division of the Provincial Court where it may be enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

### Conclusion

The Tenant shall pay the rent arrears in the sum of **\$463.00** forthwith to the Landlord.

I grant an Order of Possession to the Landlord effective **noon on October 15, 2018** 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.

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: September 24, 2018

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Residential Tenancy Branch