



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

This matter originally convened by way of an *ex parte* Direct Request Proceeding on August 1, 2018. The tenant applied for a Review Consideration of the Direct Request Decision. This participatory hearing was scheduled pursuant to the Review Consideration Decision dated August 13, 2018.

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;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties attended this hearing, I find that both parties were served with the required documents, pursuant to sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

## Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in June of 2010 and is currently ongoing. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenant's agent is currently residing with the tenant.

The landlord's agent (the "landlord") testified that on June 25, 2018 the landlord and the tenant entered into a Mutual Agreement to End Tenancy with an effective date of July 31, 2018 (the "Mutual Agreement"). The tenant testified that he was drinking that day and that he may have signed the Mutual Agreement because he didn't want to argue with the landlord. The Mutual Agreement was entered into evidence.

The landlord testified that the tenant's agent was personally served with a 10 Day Notice to End Tenancy for unpaid rent with an effective date of July 22, 2018 (the "10 Day Notice") on July 12, 2018. The tenant's advocate testified that it was the tenant who was personally served with the 10 Day Notice on July 12, 2018. The tenant testified that he didn't know if he received it or if the tenant's advocate received it. The tenant and the tenant's advocate confirmed that the 10 Day Notice was received by one of them on July 12, 2018. The landlord entered into evidence a witnessed proof of service document which stated that an adult woman residing with the tenant was personally served with the 10 Day Notice on July 12, 2018.

The landlord testified that June 2018's rent was paid as follows:

- \$800.00 government cheque received on May 23, 2018;

The tenant's advocate testified that in addition to the \$800.00 government cheque, the tenant paid the landlord \$200.00 in cash on May 23, 2018. The landlord denied receiving this payment.

Both parties agreed that July- September 2018's rent was paid as follows:

- \$800.00 government cheque received on June 27, 2018;
- \$50.00 cash payment received July 13, 2018;

- \$300.00 cash payment received July 25, 2018;
- \$800.00 government cheque received at the end of July 2018;
- \$1,000.00 cash payment received August 22, 2018.

The landlord entered into evidence a copy of a receipt (#7) issued by the landlord for June 2018 indicating that \$850.00 was paid (includes a \$50.00 cash payment made on July 13, 2018.) The receipt indicates that \$150.00 is owed.

The landlord entered into evidence a copy of a receipt (#8) issued by the landlord for July 2018 indicating that \$800.00 was paid. The landlord notates that \$200.00 remains owing.

The landlord entered into evidence a copy of a receipt (#9) issued by the landlord for July 2018 indicating that \$300.00 cash was paid on July 25, 2018. The landlord notates that June rent is now paid and \$50.00 is owed for July. The receipt indicates payment is accepted for use and occupancy only.

The landlord entered into evidence a copy of a receipt, which is in a different format than the previous receipts, issued by the landlord, for \$800.00. The landlord notates that \$50.00 is for the outstanding balance due for July and that the balance is to be applied to August's rent. The receipt states that the outstanding balance for August is \$250.00. The receipt indicates payment is accepted for use and occupancy only.

The landlord entered into evidence a copy of a receipt issued by the landlord for \$1,000.00 cash. The landlord notates that \$250.00 is for August's rent and that \$750.00 is for September's rent. The receipt indicates payment is accepted for use and occupancy only.

The tenant's advocate testified that the tenant did not file an application with the Residential Tenancy Branch to dispute the 10 Day Notice.

The tenant's advocate testified that while the amount of money the tenant paid are accurately reflected on the receipts, the amount outstanding is incorrect because the tenant paid June's rent in full.

### Analysis

I find that the service of the 10 Day Notice was effected on the tenant on July 12, 2018, in accordance with section 88 of the *Act*.

Based on the evidence of both parties and the copies of rent receipts provided by the landlord, I find that the tenant failed to pay the July 2018 rent within five days of

receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. 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 his tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises by July 22, 2018, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

But for the 10 Day Notice, I find that the Mutual Agreement would have ended this tenancy on the effective date of the Mutual Agreement, that being July 31, 2018. I find that the Mutual Agreement did not extend the effective date of the 10 Day Notice because it was entered into prior to the 10 Day Notice being served on the tenant. The presence of the Mutual Agreement did not reduce the tenant's obligation to pay rent on time, nor did it reduce the remedies available to the landlord under the *Act* for the tenant's failure to pay rent on time.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,000.00 on the first day of each month which he failed to do. I accept the landlord's testimony as to what rent was paid for June 2018 over that of the tenant and the tenant's advocate as the landlord provided rental receipts showing the payments made by the tenant, the majority of which both parties agreed to. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$250.00 in unpaid rent.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

I confirm the Two Day Order of Possession from the Direct Request Decision dated August 1, 2018.

I set aside the Monetary Order from the Direct Request Decision dated August 1, 2018.

I issue a Monetary Order to the landlords in the amount of \$350.00.

The landlords are 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: September 28, 2018

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Residential Tenancy Branch