



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNRL, OPR

### Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing by teleconference was scheduled for 11:00AM. I left the teleconference hearing connection open until the hearing concluded at approximately 11:30 to enable the tenant to call in; however, the tenant did not call in.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only ones who had called into this teleconference.

Rules 7.1 and 7.3 of the RTB Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The Landlord attended the hearing and was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The Landlord testified that on July 31, 2018 he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) by handing it to him at the rental property; the service was witnessed by a third party. The 10 Day Notice identified

\$1,040 in unpaid rent owing on July 11, 2018 and identified August 11, 2018 as the date the tenant was required to vacate.

The landlord testified that the tenant is still residing in the house on the rental property and that no money has been paid towards the amount owing on the 10 Day Notice since the 10 Day Notice was issued.

On August 8, 2018 the Landlord used Canada Post registered mail to serve the tenant with this Application for Dispute Resolution (Application). On August 16, 2018 the Landlord used Canada Post registered mail to serve the tenant with evidence submitted to support the Application. On August 21, 2018 the Landlord used Canada Post registered mail to serve the tenant with an amendment to the Application to include a claim for \$4,900 in unpaid rent. On August 24, 2018 the Landlord used Canada Post registered mail to serve the tenant with the notice of this hearing scheduled for September 13, 2018.

The landlords' amended Application for a monetary award includes a request for \$1,100 in unpaid rent for July 11 – 31, 2018 and \$1,900 per month in rent for August and September 2018 for a total request for \$4,900 in unpaid rent.

#### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recover the filing fee from the tenant?

#### Background and Evidence

The following is undisputed.

According to the terms of a tenancy agreement that is not part of this Application, the Landlord's previous tenant, J.A.Y., was vacating the rental property on June 30<sup>th</sup>, 2018. On June 29, 2018, the Landlord learned the vacating tenant had allowed an occupant to live in the house on the rental property. The occupant, who is the respondent to this Application, contacted the Landlord on June 29, 2018 by text message to introduce himself and request the Landlord's permission to remain in the house on the rental property after J.A.Y. vacated on June 30, 2018. In his texts to the Landlord, the occupant said that he and his three-year old daughter had nowhere to go.

On June 30, 2018 the Landlord met with the occupant for the first time and they created a tenancy agreement. The Landlord took a photograph of the tenant's BC government issued identity card and accepted \$550 in rent for the period July 1 – 10, 2018. Both parties signed a handwritten agreement stating that on July 10, 2018 they would meet again and determine if the tenancy agreement would be extended beyond July 10, 2018, but not later than July 24, 2018.

The Landlord testified that there was no possibility he would extend the tenancy agreement past July 24, 2018 because he had already entered into a new tenancy agreement effective August 1, 2018 with someone else. The Landlord provided a copy of this new tenancy agreement which listed rent as \$1,900 effective August 1, 2018.

The Landlord testified the tenant has provided no further rent since their meeting on June 30, 2018 when he paid \$550. The tenant does not respond to phone calls or knocks at the door of the house. The Landlord testified he believes the tenant is living in the house as his dog is there; as a result, the landlord has been unable to give possession of the rental property to the new tenant.

### Analysis

Based on the Landlords' evidence and undisputed testimony, I find that the tenancy should have ended on July 10, 2018 as there was no agreement to extend it and the tenant did not pay for rent past July 10, 2018.

I find the 10 Day Notice the Landlord served on the tenant on July 31, 2018 to be valid as it conforms with the provisions of section 52 of the Act and was properly served according to section 89(2) of the Act.

The tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the Act within five days of receiving the 10 Day Notice. I find that, due to the failure of the tenant to take either of these actions, the tenant is conclusively presumed to have accepted the end of this tenancy on August 11, 2018 pursuant to sections 46(5) and 53(2) of the Act.

As the tenant has not vacated the rental property, he is an overholding tenant per section 57(1) of the Act. As per section 57(3), the Landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy has ended.

As the June 30, 2018 handwritten tenancy agreement identifies \$1,650 as the base monthly rent, I find the Landlord is entitled to a monetary award of \$4,400 for unpaid rent in July, August and September. If the tenant vacates prior to September 30, 2018, the Landlord should pro-rate the rent for September.

Unpaid rent July 11 – July 31, 2018	1,100.00
Unpaid rent August 1 – August 30, 2018	1,650.00
Unpaid rent September 1 – September 30, 2018	1,650.00
Filing Fee for the cost of this application	100.00
Total Monetary Award to Landlord	\$4,500.00

### Conclusion

The Landlord's application is granted.

I grant an Order of Possession to the Landlord effective two (2) days from the day it is served on the tenant. The tenant must be served with this Order of Possession.

Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I grant the Landlord an Order under Section 67 of the Act for \$4,500.00. If necessary, this Order may be filed in the 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: September 17, 2018

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Residential Tenancy Branch