



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COQUITLAM KINSMEN HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNRL-S, OPR

### Introduction

This hearing convened as a Review Hearing.

Originally, the hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on May 1, 2018 (the "Notice"). The Tenant did not call into the original teleconference hearing on July 10, 2018 and an Order of Possession and Monetary Order were made in his absence.

The Tenant applied for Review Consideration on July 23, 2018. By Decision dated July 25, 2018 the Tenant's request for a Review Hearing was granted.

The Review Hearing was scheduled for teleconference before me at 9:30 a.m. on September 17, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession and Monetary Order based on the Notice?
2. Should the Landlord recover the filing fee?

### Background and Evidence

At the original hearing the Arbitrator recorded the following evidence from the Landlord:

"The parties entered into a tenancy agreement in January of 2014; a copy was submitted into evidence. The rent was to be determined as 30% of the tenant's gross monthly household income or "*other scale as the landlord may determine from time to time*".

A rent report dated July 1, 2017 to June 30, 2018 submitted by the Landlord states that the Tenant's share of the rent was \$466.00, with a rent subsidy of \$570.00. On July 1, 2018, the Tenant's share of his rent was adjusted to \$736.00 based on his gross income. A security deposit of \$400.00 was paid at the start of the tenancy.

The Landlord served several 10-Day Notices to End Tenancy for Unpaid Rent: January 18, 2018, November 13, 2017 and May 3, 2018. The Landlord states that when the ministry directly paid the Tenant's share, rent arrears were not an issue; when the process changed and rent was directly collected from the Tenant, concerns arose about timely payments.

The latest Notice claims \$466.00 of rent arrears due May 1, 2018. It had an effective date of May 13, 2018 and it was served by posting it on the Tenant's door on May 3, 2018; a proof of service form was signed by a witness and submitted into evidence. The Tenant did not file a dispute application or pay the arrears within the 5-day limitation period.

At the hearing before me the Landlord's representative, D.B., confirmed the above and provided the following additional testimony.

D.B. stated that the Tenant failed to pay rent for June, July, August and September 2018.

D.B. stated that the tenants are informed that the subsidy amount is revisited each year and is adjusted July 1 of each year. She stated that the tenants are given notice of the change two months in advance, or earlier should they provide their income information sooner.

The Tenant's rent increased from \$466.00 to \$736.00 on July 1, 2018. D.B. stated that she was only able to give him notice on June 13, 2018 of the increase as she had to wait for him to provide pay stubs. She confirmed that she received his pay stubs "just before that", either that day or the day before.

D.B. confirmed that there is an opportunity to ask that the amount "be looked at" and she did have a second look at the amount of the increase and there was no change.

D.B. confirmed that the Tenant failed to pay the following rent when due:

June	\$466.00
July	\$736.00
August	\$736.00
September	\$736.00
TOTAL	\$2,674.00

She further confirmed that he "had a bit of a credit" such that the total amount was actually \$2,626.00.

D.B. stated that shortly before the hearing the Tenant made some payments; including \$600.0 on September 12, 2018 and \$500.00 on September 15, 2018. D.B. confirmed that they issued a receipt for "use and occupancy only". She further stated that as of the date of the hearing the amount of \$1,526.00 is outstanding.

The Tenant testified as follows.

The Tenant stated that he agreed with the Landlord's submissions regarding his unpaid rent.

The Tenant stated his rent is due on the last day of the month.

The Tenant further stated he was unable to pay his rent on time in the past due to the date he is paid. He confirmed that he has changed his payroll to ensure he is paid before the last day of the month so that he can pay as and when due.

The Tenant confirmed that he owes the sum of \$1,526.00 in rent. He stated that he was very hopeful that he would be able to resolve matters with the Landlord at the hearing so that his tenancy could continue.

### Analysis

Based on the testimony and evidence before me, and on a balance of probabilities, I find as follows.

I find that the Notice was served on the Tenant on May 3, 2018 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later such that I find the Tenant was served the Notice on May 6, 2018. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, May 11, 2018. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

The Tenant agreed that the sum of \$1,526.00 was outstanding in rent. I therefore find that the Landlord has established a total monetary claim of **\$1,626.00** comprised of \$1,526.00 in outstanding rent and the \$100.00 fee paid by the Landlord for this application.

I grant the Landlord a Monetary Order under section 67 of the *Act* in the amount of \$1,626.00. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and is granted a Monetary Order for the balance due.

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 18, 2018

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Residential Tenancy Branch