



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VY- GAR ENTERPRISES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            OPR, MNRL, FFL, CNC, CNR

### Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46; and
- cancellation of the One Month Notice to End Tenancy, pursuant to section 47.

This hearing also 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; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord testified that the tenant was personally served with the notice of dispute resolution package on September 16, 2018. I find that the tenant was served with this package on September 16, 2018, in accordance with section 89 of the *Act*.

### Preliminary Issue- Tenant's Attendance

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. 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.

Rule 7 of the Rules of Procedure provides as follows:

#### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the 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.

Based on the above, **in the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply.**

#### 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* of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee for this application 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 the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided undisputed testimony that this tenancy began on April 21, 2017 and is currently ongoing. Monthly rent in the amount of \$750.00 is payable on the first day of each month. A security deposit of \$375.00 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 landlord testified that the tenant failed to pay rent in the amount of \$750.00 on September 1, 2018, when it was due. The landlord testified that on September 2, 2018 the 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of September 12, 2018 (the "10 Day Notice") was posted on the tenant's door. The landlord entered into evidence a witnessed Proof of Service form which stated that the landlord posted the 10 Day Notice on the tenant's door on September 2, 2018.

The landlord testified that the tenant has not paid any rent for September or October 2018.

#### Analysis

I find that service of the 10 Day Notice was effected on the tenant on September 5, 2018, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. In this case, I find that the earliest date permitted under section 46 of the *Act* is September 15, 2018. I find that the corrected effective date of the 10 Day Notice is September 15, 2018.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement. Section 26(1) applies even if the landlord breaches the *Act*, the regulation or the tenancy agreement. Pursuant to section 26(1), I find that the tenant was obligated to pay the monthly rent in the amount of \$750.00 on the first day of each month for September and October 2018, which he failed to do. I find that the tenant owes the landlord \$1,500.00 in back rent from September to October 2018.

Section 46(1) of the *Act* states that 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.

Section 46(2) of the *Act* states that a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 46(4) of the *Act* states that 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.

I find that the tenant did not pay the overdue rent and that his application to dispute the 10 Day Notice was dismissed without leave to reapply. Upon review of the 10 Day Notice I find that it complies with the form and content requirements set out in section 52 of the *Act*.

Pursuant to the 10 Day Notice, this tenancy was scheduled to end on the corrected effective date of September 15, 2018. As that has not occurred, I find that the landlord is entitled to a two-day Order of Possession, pursuant to section 55 of the *Act*.

As the landlord was successful in her 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 dismiss the tenant's application without leave to reapply.

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
September rent	\$750.00
October rent	\$750.00
Filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,600.00</b>

The landlord is 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.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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: October 04, 2018

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Residential Tenancy Branch