



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      FFL, OPRM-DR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on August 18, 2018 (the “Application”). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2018 (the “Notice”), to recover unpaid rent and reimbursement for the filing fee. This was a direct request that was adjourned for a participatory hearing.

The Property Manager appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Property Manager who did not have questions when asked. The Property Manager provided affirmed testimony.

During the hearing, the Property Manager confirmed the Landlord is seeking to keep the security deposit towards unpaid rent.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord’s evidence.

The Property Manager confirmed the information in the Canada Post registered mail receipts submitted. The first receipt relates to the hearing package. It shows it was sent September 10, 2018 to the Tenant at the rental unit. It includes Tracking Number 1. The Landlord submitted the tracking information which shows the package was unclaimed and that a notice card was left indicating where and when to pick up the package.

The second receipt relates to the evidence. It shows it was sent September 27, 2018 to the Tenant at the rental unit. It includes Tracking Number 2. With permission, I looked this up on the Canada Post website which shows the package was delivered and signed for by the Tenant October 2, 2018.

Based on the undisputed testimony of the Property Manager, the evidence submitted and the Canada Post website information, I find the Tenant was served with the hearing package in accordance with section 89(1)(c) of the *Residential Tenancy Act* (the "Act"). The Tenant is deemed to have received the hearing package pursuant to section 90 of the Act. The Tenant is not permitted to avoid service by failing to pick-up the package. I also find the hearing package was sent in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

Based on the undisputed testimony of the Property Manager, the evidence submitted and the Canada Post website information, I find the Tenant was served with the evidence in accordance with section 88(c) of the Act. I also find the evidence was sent in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Property Manager was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Property Manager. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

Written tenancy agreements had been submitted as evidence. The current tenancy agreement is between the Landlord and Tenant in relation to the rental unit. The tenancy started May 1, 2017 and was for a fixed term ending November 30, 2017. The Property Manager confirmed the tenancy then became a month-to-month tenancy. Rent is \$1,000.00 per month plus \$25.00 for parking for a total of \$1,025.00 per month.

Rent is due by the first day of each month. The Tenant paid a \$500.00 security deposit. The agreement is signed by the Tenant and on behalf of the Landlord.

The tenancy agreement states that, if the Tenant is eligible for a rent subsidy, the Tenant will pay the lesser of the rent or the Tenant Rent Contribution. Further, the tenancy agreement states the following:

If the tenant is eligible to receive a rent subsidy...the tenant agrees to (i) complete and sign a declaration stating the number of occupants in the residential premises, their names, birth dates, gross incomes and assets on a form provided by the landlord, at least once in every 12 month period and from time to time as required by the landlord; and (ii) provide proof of income and assets with such declaration...

The Landlord submitted a Calculation of Rent Contribution Details effective from June 1, 2017 to May 31, 2018. It shows the Tenant's rent contribution as \$466.00 plus \$25.00 for parking for a total of \$491.00.

The Property Manager confirmed that the Tenant was supposed to provide the necessary information to the Landlord so that her current rent contribution could be calculated. The Property Manager testified that the Tenant failed to provide the necessary information as required. The Property Manager confirmed that the prior rent contribution calculation expired May 31, 2018 and therefore, as of June 1, 2018, the rent went back up to the market rent of \$1,000.00 plus \$25.00 for parking for a total of \$1,025.00. The Property Manager confirmed that, as shown on the Monetary Order Worksheet, the Tenant continued to pay the \$491.00 for June and July. Therefore, as of August 1, 2018, the Tenant owed \$2,093.00.

The Notice states the Tenant failed to pay \$2,093.00 in rent due August 1, 2018. It is addressed to the Tenant and relates to the rental unit. It is signed and dated by an agent for the Landlord. It has an effective date of August 15, 2018.

The Property Manager confirmed the information in the Proof of Service submitted as evidence. This states that an agent for the Landlord served the Notice on the Tenant by attaching a copy to the front door of the rental unit on August 2, 2018. The Property Manager testified that both pages of the Notice were served on the Tenant. The Proof of Service is signed by a witness.

The Property Manager confirmed that the Tenant paid \$491.00 of the outstanding rent on August 7, 2018 as noted on the Monetary Order Worksheet. The Property Manager testified that the Tenant also paid \$491.00 in rent on September 1, 2018. The Property Manager testified that the Tenant was issued “use and occupancy only” receipts for these two payments. The Landlord had submitted a copy of the September receipt.

The Property Manager testified that the Tenant did not dispute the Notice. The Property Manager testified that the Tenant did not have authority under the *Act* to withhold rent.

The Property Manager testified that the Tenant currently owes \$3,161.00 in outstanding rent and asked to amend the Application to request the full amount.

The Property Manager advised that the Landlord had previously issued a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit; however, the Landlord did not pursue ending the tenancy on the basis of this notice.

### Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy where tenants have failed to pay rent. The relevant portions of section 46 state:

- 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...
- (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.

...

Based on the evidence submitted and undisputed testimony of the Property Manager, I find the following. The market rent for the rental unit is \$1,025.00 per month. The Tenant was required to provide the information necessary to calculate the Tenant Rent Contribution. The Tenant failed to do so. The previous Tenant Rent Contribution expired May 31, 2018. Therefore, as of June 1, 2018, the Tenant was required to pay the market rent of \$1,025.00 per month by the first day of each month.

Based on the evidence submitted and undisputed testimony of the Property Manager, I find the Tenant paid \$491.00 for June rent, \$491.00 for July rent and did not pay rent August 1, 2018. Therefore, I accept that the Tenant owed \$2,093.00 in rent on August 1, 2018 as stated in the Notice. Based on the undisputed testimony of the Property Manager, I accept that the Tenant did not have a right to withhold rent under the *Act*. Therefore, I find the Tenant was required to pay \$2,093.00 by August 1, 2018 under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Given the Tenant failed to pay rent as required, the Landlord was entitled to serve her with the Notice pursuant to section 46(1) of the *Act*.

Based on the Proof of Service and undisputed testimony of the Property Manager, I find the Tenant was served with the Notice on August 2, 2018 in accordance with section 88(g) of the *Act*. The Tenant is deemed to have received the Notice on August 5, 2018 pursuant to section 90(c) of the *Act*.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice to pay or dispute it under section 46(4) of the *Act*. I accept the undisputed testimony of the Property Manager that the Tenant did not dispute the Notice. I have no evidence before me that she did.

The Property Manager testified that the only payments made since the Notice was issued were of \$491.00 on August 7, 2018 and \$491.00 on September 1, 2018. The Tenant was required to pay the outstanding rent in full within five days of receiving the Notice in order to cancel it. I find that the Tenant did not do so.

Given the above, I find pursuant to section 46(5) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended August 15, 2018, the effective date of the Notice. The Tenant was required under section 46(5) of the *Act* to vacate the rental unit by August 15, 2018.

The Landlord is entitled to an Order of Possession. Pursuant to section 55 of the *Act*, I grant the Landlord an Order of Possession effective two days after service on the Tenant.

Further, I accept the undisputed testimony of the Property Manager that the Tenant currently owes \$3,161.00 in outstanding rent and amend the Application to reflect this pursuant to rule 4.2 of the Rules of Procedure.

I find the Landlord is entitled to monetary compensation in the amount of \$3,161.00 for unpaid rent.

As the Landlord was successful in this application, I grant the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

The Landlord is therefore entitled to monetary compensation in the amount of \$3,261.00. Pursuant to section 72(2) of the *Act*, the Landlord can keep the \$500.00 security deposit. Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,761.00.

### Conclusion

The Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to monetary compensation in the amount of \$3,261.00. The Landlord can keep the \$500.00 security deposit. The Landlord is granted a Monetary Order in the amount of \$2,761.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: October 18, 2018

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Residential Tenancy Branch