



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

<u>Dispute Codes</u>	Tenant	CNR, MT, OLC, FFT
	Landlord	OPRM-DR, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on August 10, 2018. The Tenant applied to cancel a 10-Day Notice for Unpaid rent or Utilities (the Notice) dated August 1, 2018, to request more time to cancel a notice, for an order for the Landlord to comply with the Act, Regulation or tenancy agreement and the return of his filing fee. The Landlord’s Application for Dispute Resolution was made on August 11, 2018. The Landlord applied for an Order of Possession, for a monetary order for the outstanding rent and to recover his filing fee.

The Landlord attended the conference call hearing; however, the Tenant did not. As the Tenant is also an applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Should the Notice to End Tenancy, dated August 1, 2018, be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to additional time to file his application?
- Should the Landlord be ordered to comply with the *Act*?

- Is the Tenant entitled to recover the filing fee paid for this application?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to recover the filing fee paid for this application?

### Background and Evidence

The Landlord testified that the tenancy began on July 1, 2017. Rent in the amount of \$950.00 is to be paid by the last day of each month, and the Landlord is holding a \$475.00 security deposit for this tenancy.

The Landlord testified that he served the Notice to the Tenant on August 1, 2018, by posting it to the front door of the rental unit. The Notice has an effective date of August 11, 2018, an outstanding rent amount of \$950.00 and an outstanding utility amount of \$35.00. The Landlord testified that the Tenant did pay the outstanding rent on August 12, 2018, outside of the legislated five days allowed under the Notice. The Landlord is requesting that the Notice is enforced and that an order of possession is issued.

The Landlord also testified that the Tenant paid his September 2018 rent late and that his October 2018 was not paid as of the date of this hearing. The Landlord is requesting a monetary order for the outstanding rent for October 2018.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant did apply to dispute the Notice and that the matter was set for hearing by telephone conference call at 9:30 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing was the Landlord.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

**7.1** The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3** 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.

Therefore, as the Tenant did not attend the hearing by 9:41 a.m., I dismiss the Tenant's application without leave to reapply.

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

**Landlord's notice: non-payment of rent**

- 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 *[form and content of notice to end tenancy]*.
- (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.

I find that the Tenant was deemed to have received the Notice on August 4, 2018. Accordingly, I find that the Tenant had until August 9, 2018, to either paid the outstanding rent or disputed the Notice. In this case, I find that the Tenant paid the outstanding rent until August 12, 2018, and filed to dispute the Notice until August 10, 2018, both outside of the legislated timeline. Consequently, I find that the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective **two 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 is cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, I find that the Landlord has established an entitlement to a monetary award for the outstanding rent for October 2018, in the amount of \$950.00.

As the Landlord has been successful in his application, I also find that the Landlord is entitled to recover their \$100.00 filing fee for this hearing.

I grant the Landlord a monetary order in the amount of \$1,050.00; consisting of \$950.00 in unpaid rent, and \$100.00 for the recovery of the filing fee.

### Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenant. The Tenant must be served with this Order. 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.

I grant the Landlord a **Monetary Order** in the amount of **\$1,050.00**. 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.

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 1, 2018

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Residential Tenancy Branch