



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OPR MNR FF / CNR FF

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

Both parties denied service of the respective applications for dispute resolution. Both parties testified that the other party was served by registered mail and provided tracking numbers in support of service.

Based on the above evidence, I am satisfied that both parties were deemed served with the respective Applications for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act.

Preliminary Issue – Amendment to Landlord's Application and naming of parties

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent in the amount of \$2300.00 that was payable on October 1, 2018. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

The tenant's application named three additional tenants. Only tenant B.H. is named in the landlord's application and on the tenancy agreement. Therefore, any orders issued in this decision are naming tenant B.H. only.

### Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Is the landlord entitled to a monetary award for unpaid rent?

Are the landlord and/or tenant entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy began on March 15, 2018 with a monthly rent of \$2300.00 payable on the 1<sup>st</sup> day of each month.

The landlord testified that on August 18, 2018 he personally served the tenant with the 10 Day Notice. As per the 10 Day Notice, there was an amount of \$6300.00 in rent outstanding. The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice. The landlord testified that the tenant has not paid any rent since the service of this unit with the exception of a \$500.00 payment on September 9, 2018.

The landlord's monetary claim is for outstanding rent in the amount of \$10,400.00. The landlord testified that this includes unpaid rent for the period of March 2018 to October 2018. The landlord submitted a breakdown of the amount outstanding for each month in the application.

The tenant acknowledged service of the 10 Day Notice on August 18, 2018. The tenant disputed the amount of outstanding rent as claimed by the landlord and testified that all

rent has been paid in full. The tenant acknowledged that he got behind in rent payments after the passing of his son. The tenant testified that he paid the outstanding amount of \$6300.00 in cash the day after receiving the 10 Day Notice. The tenant testified that all rent has been paid in full since including rent for October 2018. The tenant testified that he did not receive any receipts for the cash payments.

### Analysis

I am satisfied that the tenant was personally served with the 10 Day Notice on August 18, 2018 pursuant to section 88 of the Act.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenant has provided insufficient evidence that the outstanding rent was paid in full within 5 days after receiving the notice. The onus is on the tenant to prove rent payments were made. I find the tenant has not met that onus. I find it unlikely that the tenant would pay an amount of \$6300.00 in cash and not request a receipt for this transaction, especially after he was served with a 10 Day Notice putting his tenancy in jeopardy.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

I accept the landlord's claim for outstanding rent of \$10,400.00. As per above, I find the tenant has provided insufficient evidence that the outstanding rent amount as claimed by the landlord has been paid.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$10,500.00.

The tenant's application to recover the filing fee is dismissed.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order; this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$10,500.00. 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 09, 2018

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Residential Tenancy Branch