



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on September 20, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by I.S., who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, I.S. testified the Application package and documentary evidence were served on the Tenant in person on September 28, 2018. In the absence of evidence to the contrary, I find the Landlord's Application package and documentary evidence were served on and received by the Tenant on that date.

I.S. was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence 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

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

The Landlord testified the Tenant moved into the rental unit in April 2018. The previous tenants moved out leaving the Tenant as the only occupant. The Landlord continued

the tenancy. Rent in the amount of \$1,500.00 per month is due on the first day of each month. According to I.S., the Tenant did not pay a security deposit or a pet damage deposit.

On behalf of the Landlord, I.S. testified that collecting rent became increasingly difficult and a number of late payments were made from May to August 2018. The Tenant did not pay rent when due on September 1, 2018. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 14, 2018 (the "10 Day Notice"). The Landlord testified the 10 Day Notice was served on the Tenant by posting it on the door of the Tenant's rental unit on that date.

Further, I.S. testified the Tenant did not pay rent when due on October 1 and November 1, 2018. Currently, rent in the amount of \$4,500.00 is outstanding, and the Tenant continues to occupy the rental unit. According to I.S., the Tenant has stated she will only move out if a bailiff attends.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

#### Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

*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.*

[Reproduced as written.]

In this case, I.S. testified, and I find, that the 10 Day Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit on September 14, 2018. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. Therefore, I find the Tenant is deemed to have received the 10 Day Notice on September 17, 2018.

Pursuant to section 46(4) of the *Act*, the Tenant had until September 22, 2018, to pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. The Landlord testified the Tenant has not paid rent and continues to reside in the rental unit. There is insufficient evidence before me to conclude the Tenant disputed the 10 Day Notice. As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

The Landlord also sought a monetary order for unpaid rent. I find the Landlord has established an entitlement to a monetary order in the amount of \$4,600.00, which is comprised of \$4,500.00 for unpaid rent and \$100.00 in recovery of the filing fee paid to make the Application.

#### Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$4,600.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: November 5, 2018

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Residential Tenancy Branch