



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** FFL MNRL-S OPR

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlord's agent, CC, attended the hearing by way of conference call, the tenant did not. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package on October 26, 2018 by way of registered mail. The landlord provided a Canada Post tracking number during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on October 31, 2018, five days after its registered mailing.

The landlord's agent testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 2, 2018 ("10 Day Notice"), by way of posting to the rental unit door. Although the Proof of Service submitted by the landlord references both service by posting and mail, the landlord's agent confirmed that the 10 Day Notice was posted on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on October 5, 2018, three days after its posting.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover their filing fee for this application?

### **Background and Evidence**

The landlord's agent testified regarding the following facts. This month-to-month tenancy began in November 1, 2014, with monthly rent in the amount of \$900.00 payable on the first day of each month. The landlord holds a security deposit in the amount of \$450.00 for this tenancy. The landlord took over the rental property on October 1, 2018.

The landlord issued the 10 Day Notice on October 2, 2018 as he confirmed with the previous landlord that the tenant did not pay rent for the month of October 2018. The landlord testified that the tenant owes \$900.00 in outstanding rent for October 2018 despite the fact that the tenant claims the rent was paid to the previous landlord.

The landlord testified that the tenant paid November 2018 rent, which was for use and occupancy only.

### **Analysis**

The landlord's agent provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on October 15, 2018, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by October 25, 2018. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act* as the tenant has not moved out.

**Section 26** of the *Act*, in part, states as follows:

#### ***Rules about payment and non-payment of rent***

**26 (1)** *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.*

The landlord provided undisputed evidence that the tenant failed to pay the outstanding rent in the amount of \$900.00. Therefore, I find that the landlord is entitled to \$900.00 in outstanding rent for this tenancy.

The landlord continues to hold the tenant's security deposit of \$450.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that the landlord is entitled to recover the filing fee for this application.

### **Conclusion**

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$550.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

<b>Item</b>	<b>Amount</b>
Unpaid Rent	\$900.00
Recovery of Filing Fee for this Application	100.00
Security Deposit and Pet Damage Deposit	-450.00
<b>Total Monetary Order</b>	<b>\$550.00</b>

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: December 5, 2018

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Residential Tenancy Branch