



# 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 by Direct Request Proceeding, which was adjourned to a participatory hearing (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Landlord was represented at the hearing by K.D. and L.E., agents, who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, K.D. testified he served the Application package and documentary evidence on the Tenant in person. In the absence of evidence to the contrary, and pursuant to section 71 of the Act, I find the Application package and documentary evidence were sufficiently served on and received by the Tenant for the purposes of the Act.

K.D. and L.E. were 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 for unpaid rent or utilities?
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

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on September 1, 2010. Rent in the amount of \$700.00 per month is due on the first day of each month. The Tenant paid a security deposit in the amount of \$350.00, which the Landlord holds.

On behalf of the Landlord, K.D. testified the Tenant did not pay rent when due on July 1, August 1, September 1, and October 1, 2018. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 12, 2018 (the "10 Day Notice"). At that time, rent in the amount of \$2,800.00 was outstanding. K.D. testified he served the 10 Day Notice on the Tenant by posting it on the door of the Tenant's rental unit on October 12, 2018.

In addition, K.D. testified rent was also not paid when due on November 1 and December 1, 2018. Currently, rent in the amount of \$4,200.00 is outstanding, and the Tenant continues to occupy the rental unit.

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:

The Landlord sought an order of possession. In this case, K.D. testified, and I find, that the 10 Day Notice was served on the Tenant by leaving a copy attached to the door of the Tenant's rental unit on October 12, 2018. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on October 15, 2018. Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until October 20, 2018,

to either 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 find that 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. Therefore, the Tenant is over holding. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

In addition, 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.]

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$4,200.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$3,950.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$4,200.00
Filing fee:	\$100.00
LESS security deposit:	(\$350.00)
<b>TOTAL:</b>	<b>\$3,950.00</b>

### 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 \$3,950.00. 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: December 10, 2018

---

Residential Tenancy Branch