



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNDCL-S, MNRL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act, (the “*Act*”), for an order of possession to enforce 10-Day Notice for Unpaid Rent (the Notice) issued on November 6, 2018, a monetary order for unpaid rent or utilities, and to recover the cost of filing the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in her testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the Act and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution, and Notice of Hearing had been sent to the Tenant by registered mail on November 22, 2018. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenant had been duly served in accordance with the Act.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

### Preliminary Matter

At the outset of the hearing, the Landlord presented the tenancy agreement and mutual agreement to end tenancy into documentary evidence.

Upon review of this evidence, it was noted that the mutual agreement to end tenancy had been signed on September 6, 2018, and the tenancy agreement had been signed on October 1, 2018. It was also noted that the tenancy agreement did not record a term for the tenancy.

The Landlord testified that the term of the tenancy was for six-months as per the attached mutual agreement to end tenancy document. The Landlord testified that the mutual agreement to end tenancy document was signed to ensure that the Tenant would move out at the end of the agreed-upon fixed term. The Landlord also testified that she had bad tenants in the past and wanted to make sure she could get rid of this Tenant if needed.

The Landlord was cautioned that the mutual agreement to end tenancy document could be viewed as a move-out clause, and that move out clauses are no longer permitted under the *Act*.

### Issues to be Decided

- Is the Landlord entitled to an Order of Possession, pursuant to section 46 of the *Act*?
- Is the Landlord entitled to monetary compensation for unpaid rent and utilities?
- Is the Landlord entitled to recover the filing fee for this application?

### Background and Evidence

The Landlord testified that the tenancy began on October 1, 2018, as a six-month fixed tenancy; rent in the amount of \$1,495.00 is to be paid by the first day of each month and that the Tenant had paid a \$700.00 security deposit at the outset of this tenancy.

The Landlord testified that she served the Tenant with the Notice to end tenancy by posting it to the front door of the rental unit on November 6, 2018, with an effective date of December 1, 2018. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed

the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that as of the date of this hearing the Tenant had not paid the rent for November and December 2018. The Landlord is requesting an Order of Possession and a Monetary Ordre to enforce her Notice.

### Analysis

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

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 accept the undisputed testimony of the Landlord, and I find that the Tenant did not pay the rent or dispute the Notice and 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 has proven her entitlement to an order of possession. Pursuant to sections 55 of the *Act*, I grant an Order of Possession to the Landlord effective two days after service of the order on the Tenant. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Additionally, I find that the Landlord has proven her entitlement to a monetary order for the unpaid rent for November and December 2018. I award the Landlord a monetary order in the amount of \$2,990.00, and I authorize to the Landlord to keep the security deposit for this tenancy in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in her application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to sections 55, 67 and 72 of the *Act*, I grant the Landlord an Order of Possession for the rental unit and a Monetary Order in the amount of \$2,390.00; comprised of, \$2,990.00 for the outstanding rent, \$100.00 for the recovery of the filing fee, less the \$700.00 security deposit the Landlord is holding for this tenancy.

### Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order on the Tenant. 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 find for the Landlord under sections 67 and 72 of the *Act* and grant the Landlord a **Monetary Order** in the amount of **\$2,390.00**. 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: December 20, 2018

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Residential Tenancy Branch