



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OPR MNR MND FF

### Introduction

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

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant 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, to present evidence and to make submissions. The tenant confirmed service of the application for dispute resolution, including the notice of hearing and evidence on file.

### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I am exercising my discretion to dismiss the landlord's claim for damages with leave to reapply as this matter is not related to the application for an order of possession for unpaid rent. Leave to reapply is not an extension of any applicable time limit.

### Preliminary Issue – Amendment to Landlord's Application

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

At the hearing, the landlord's representative testified that the tenant had not yet vacated the rental unit and therefore asked to amend the claim to include outstanding rent up to the date of the hearing. 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.

### Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

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

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

### Background and Evidence

The tenancy began on July 11, 2018. There is no written tenancy agreement. The rental unit is the main floor of a residential house. There is no written tenancy agreement.

The landlord's representative testified the original agreement was for the tenant to occupy only one of four bedrooms in the unit at a rent of \$550.00 per month. The landlord's representative testified that as of September 1, 2018 the tenant's two children moved in with her and the tenant started to occupy three bedrooms and the parties had a verbal agreement that the rent would be \$1650.00 per month (\$550.00 per bedroom).

The landlord's representative testified the tenant has not paid any rent at all since September 1, 2018. The landlord's representative testified that on September 9, 2018 the landlord personally served the tenant with the 10 Day Notice. A witnessed proof of service of the 10 Day Notice was submitted by the landlord as evidence.

The landlord testified that the tenant did not pay the outstanding rent amount of \$1650.00 as indicated in the 10 Day Notice within five days of service of the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$8250.00. The landlord testified that this includes unpaid rent at \$1650.00 per month for the period of September 2018 through to January 2019.

The tenant denied receipt of the 10 Day Notice. The tenant was evasive when questioned on the service of the 10 Day Notice. The tenant kept referring to her having to request a tenancy agreement in writing from the landlord and avoided the question about service.

The tenant disputed the landlord's claim for unpaid rent but did not submit any testimony or evidence in support. The tenant just continuously stated that the landlord was lying and cheating. The tenant provided no proof of rent payments for the period in question.

### Analysis

I am satisfied that the tenant was personally served with the 10 Day Notice on September 9, 2018 pursuant to section 88 of the Act. I make this finding as the tenant was evasive in her testimony with respect to service and I accept the witnessed proof of service form submitted by the landlord as proof.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent 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. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

I find that the 10 Day Notice issued on September 9, 2018 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.

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.

Based on the evidence and testimony provided in this hearing, I find the tenant was originally only renting one bedroom and effective September 1, 2018 started to rent 3 bedrooms at a rate of \$1650.00 per month. Accordingly I find the tenant was obligated to pay monthly rent in the amount of \$1650.00 but failed to pay any rent for the period of

September 2018 through to January 2019. I accept the landlord's claim for outstanding rent of \$8250.00 for this period.

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 \$8350.00.

### 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 \$8350.00. 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: January 29, 2019

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Residential Tenancy Branch