



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S, MNDCL, FFL

### Introduction

On February 5, 2019, the Landlord applied for a dispute resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Landlords attended the hearing with D.G. attending as an agent for the Landlord. However, the Tenant did not appear. All in attendance provided a solemn affirmation.

D.G. advised that she served the Tenant the Notice of Hearing package by hand on February 11, 2019. Based on this undisputed evidence, and in accordance with Section 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing package.

She also advised that the evidence was posted to the Tenant’s door on January 25, 2019. Based on this undisputed evidence, and in accordance with the time frame requirements of Rule 3.14 of the Rules of Procedure, I am satisfied that the Tenant was served with the Landlord’s evidence. As such, I have accepted this evidence and considered it when rendering a decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlords stated that the tenancy started on November 1, 2017 and rent was established at \$1,050.07 per month. Furthermore, this rent was due on the first day of each month at an amount of \$525.07 and on the fifteenth day of each month at an amount of \$525.07. A security deposit of \$525.07 was also paid. The Landlords did not submit a copy of their written tenancy agreement as documentary evidence for consideration.

The Landlords were advised that Section 19 of the *Act* limits the amount of the security deposit to be no more than a half a month's rent. In addition, the Landlords were advised that the two required payments per month exceeded the actual amount of rent owed per month.

D.G. testified that the Notice was served by posting it on the Tenant's door on January 25, 2019. She advised that the Notice indicated that \$8,000.00 was outstanding on January 1, 2019; however, it could not be explained how this exact figure was accounted for.

The Landlords submitted that the Tenant paid part of the rent in November 2017, and that minimal payments were made from that period until December 2018. However, they could not explain the exact amounts paid over this period of time or how it totalled \$8,000.00 in arrears. Although, the Tenant is in arrears for some amount of rent. The Tenant's last rent payment was made on December 5, 2018 of \$1,275.07.

The Landlords did not submit a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to

be provided by the Landlords as it is essential to the matter at hand. A copy of this Notice was provided by fax after the hearing concluded. The Notice indicated that the effective end date of the tenancy was February 3, 2019.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlords' 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on January 28, 2019, three days after it was posted to the door. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on Saturday February 2, 2019, the Tenant must have paid the rent in full by this date or made his Application by February 4, 2019 at the latest. As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being deemed to have received the Notice. Furthermore, there is no evidence before me that the Tenant had a valid reason for

withholding the rent pursuant to the *Act*. In addition, the Tenant did not dispute the Notice either. Ultimately, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

As the Landlords' Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Section 46 of the *Act*.

With respect to the Landlords' claims for monetary compensation for unpaid rent, as the Landlords were not clear in outlining exactly how much rent is in arrears, I dismiss this portion of the Landlords' claims with leave to reapply.

As the Landlords were successful in this application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to deduct this amount from the security deposit.

### Conclusion

The Landlords are provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant 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.

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: March 18, 2019

---

Residential Tenancy Branch