



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

On April 8, 2019, the Landlord applied for a Direct Request 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*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On April 17, 2019, this matter was set down for a Dispute Resolution proceeding to be heard on May 31, 2019 at 9:30 AM.

The Landlord attended the hearing with S.S. attending as an agent for the Landlord. The Tenant did not attend the hearing. All in attendance provided a solemn affirmation.

S.S. advised that the Landlord served the Tenant with the Notice of Hearing package and evidence by registered mail (the registered mail tracking number is on the first page of this decision) on April 20, 2019. Based on the undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received this package five days after it was mailed.

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 a Monetary Order for the 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.

S.S. stated that the tenancy started on May 15, 2017 and that rent was established at \$1,200.00 per month, due on the fifteenth day of each month. A security deposit of \$600.00 was paid.

She indicated that the Notice was served to the Tenant by posting it to the Tenant's door on March 23, 2019, which indicated that \$2400.00 was outstanding on March 15, 2019. She also submitted a signed proof of service indicating how and when this Notice was served. She stated that the Tenant had only paid \$300.00 for April 2018 rent and had not paid any rent for February or March 2019. As well, as of the hearing, the Tenant has not paid any rent for April or May 2019 either. As a result, the Landlord is seeking a monetary Order in the amount of **\$5,700.00**. The Notice indicated that the effective date of the Notice was April 1, 2019.

S.S. also requested that the Landlord be allowed to retain the security deposit to offset any monetary award.

### 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 Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has 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 three days after it was posted to his door on March 23, 2019.

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 after being deemed to have received the Notice fell on Sunday March 31, 2019, the Tenant must have paid the rent in full by this day or made this Application by April 1, 2019 at the latest. The undisputed evidence is that the Tenant did not pay the rent to cancel the Notice by March 31, 2019 or make an Application to Dispute the Notice on April 1, 2019. Moreover, the Tenant did not establish that he had a valid reason for withholding the rent pursuant to the *Act*.

As the Landlord's 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 Sections 52 and 55 of the *Act*.

I also find that the Landlord is entitled to a monetary award and I grant the Landlord a Monetary Order in the amount of **\$5,700.00**, which is comprised of rent owed for the months of April 2018 and February, March, April, and May 2019.

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. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

Item	Amount
April 2018 – Outstanding rent	\$900.00
February 2019 – Outstanding rent	\$1,200.00
March 2019 – Outstanding rent	\$1,200.00

April 2019 – Outstanding rent	\$1,200.00
May 2019 – Outstanding rent	\$1,200.00
Security deposit	-\$600.00
Filing fee	\$100.00
<b>Total Monetary Award</b>	<b>\$5,200.00</b>

### Conclusion

I grant an Order of Possession to the Landlord **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.

The Landlord is provided with a Monetary Order in the amount of **\$5,200.00** 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: May 31, 2019

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Residential Tenancy Branch