



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      OPR MNR MNDC 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 and utilities pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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. The tenant did not attend this hearing, although I waited until 9:47 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord testified that on April 15, 2019, he personally served the tenant with a copy of the Application for Dispute Resolution and Notice of Hearing. He subsequently served his amended application also in person to the tenant approximately two weeks ago but could not recall the exact date. The landlord testified that he had a witness present with him at the time of service of both the original and amended applications.

Based on the above affirmed testimony of the landlord, I am satisfied that the tenant was served with the Application for Dispute Resolution, Notice of Dispute Resolution Hearing and Amended Application pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenant.

### Issues

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

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

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss?

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

### Background and Evidence

The tenancy began on February 8, 2019. The monthly rent at the start of the tenancy was \$2950.00 plus \$100.00 for internet payable on the 1<sup>st</sup> day of each month. Effective April 1, 2019 the rent was only \$2950.00 as the internet was cancelled. The tenant was also responsible hydro and gas utilities as per the tenancy agreement. The tenant had got the hydro account switched to his name but the gas account. A security deposit of \$1475.00 was to be provided at the start of the tenancy but was not paid.

The landlord testified that on March 4, 2019 he personally served the tenant with the 10 Day Notice. A witnessed proof of service of the 10 Day Notice was provided with the application. The landlord testified that the tenant had also originally filed to dispute the 10 Day Notice but later withdrew the application. The landlord submits that this is further proof the tenant was served with the 10 Day Notice.

The landlord testified that the tenant did not pay the outstanding amount of rent or utilities as indicated in the 10 Day Notice within five days of service of the Notice and has not paid any rent or utilities since.

The landlord is claiming is outstanding rent in the amount of \$2950.00 plus \$100.00 for internet for March 2019; \$2950.00 for April 2019; and \$2950.00 for May 2019 for a total of \$8950.00.

The landlord is also claiming \$403.10 for unpaid gas bills for the period of February 8, 2019 to April 1, 2019. A copy of the gas bill was provided.

The landlord was also seeking loss of rent for June 2019 as the tenant has not yet vacated the rental unit. The landlord submits that he will not be able to re-rent the unit for June 2019.

The landlord was also seeking the security deposit which was not paid at the beginning of the tenancy.

### Analysis

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 Notice.

Based upon the undisputed testimony of the landlord and witnessed proof of service document, I am satisfied that the tenant was personally served with the 10 Day Notice on March 4, 2019.

I find that the Notice issued by the landlord 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.

I find the tenant was obligated to pay \$2950.00 monthly rent plus \$100.00 for internet services up to April 1, 2019. I accept the landlord's uncontested testimony and evidence and find the landlord's is entitled to an award for outstanding rent and internet services totaling \$8950.00.

I find the tenant was obligated to pay for gas utilities as per the tenancy agreement and the tenancy has not paid the gas bill up to April 1, 2019 as submitted by the landlord. The landlord is awarded \$403.10 for unpaid utilities.

The landlord's claim for loss of June 2019 rent is dismissed with leave to reapply as it is not yet certain the landlord will suffer this loss or be able to mitigate this loss by re-renting the unit sooner.

The landlord's claim to collect the security deposit is also dismissed as this should have been collected at the start of the tenancy.

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 \$9453.10.

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 \$9453.10. 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 30, 2019

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Residential Tenancy Branch