



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-DR

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an Order of Possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlord’s paper application only, not any participation by the tenant. An “interim decision,” dated March 29, 2019, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlord was required to serve the interim decision and notice of reconvened hearing to the tenant. The landlord stated that the tenant was served with the above documents on April 4, 2019, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post receipt and tracking number with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the interim decision and notice of reconvened hearing on April 9, 2019, five days after its registered mailing.

The landlord claimed that the tenant was served with the landlord's original application for dispute resolution by direct request on March 22, 2019, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post receipt and tracking number with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's original application on March 27, 2019, five days after its registered mailing.

The landlord stated that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 9, 2019, ("10 Day Notice") by way of registered mail on the same date. The landlord provided a Canada Post receipt and tracking number with this application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on March 14, 2019, five days after its registered mailing.

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

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include the remaining May 2019 rent of \$800.00. I find that the tenant is aware that rent is due as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his full rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that he did not attend this hearing.

#### Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

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

#### Background and Evidence

The landlord testified regarding the following facts. This tenancy began on May 1, 2013. Monthly rent in the current amount of \$813.46 is payable on the first day of each month. A security deposit of \$396.81 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties,

indicating an initial rent of \$793.62. The landlord provided a Notice of Rent Increase, dated September 10, 2018 ("NRI"), increasing the rent from \$793.62 by 2.5% of \$19.84 for a total of \$813.46, effective on January 1, 2019. The NRI was served to the tenant by way of posting to his rental unit door on September 11, 2018. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, which has an effective move-out date of March 26, 2019, indicating that rent in the amount of \$40.38 was due on March 2, 2019. The landlord provided a copy of the notice. The landlord explained that the tenant failed to pay \$13.46 for three months from January to March 2019, totalling \$40.38. The landlord claimed that the tenant paid the \$40.38 plus an additional \$26.92, for a total of \$67.30, on April 15, 2019. The landlord claimed that he provided a receipt for the above payment of \$67.30, indicating it was for "use and occupancy only." The landlord maintained that the tenant failed to pay the remaining \$800.00 due for May 1, 2019 rent.

The landlord seeks an order of possession based on the 10 Day Notice, a monetary order of \$800.00 for unpaid rent for May 2019.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on March 1, 2019, within five days of being deemed to have received the 10 Day Notice. Even though the tenant paid the outstanding amount on April 15, 2019, it was past the five day period. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on March 26, 2019, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by March 26, 2019. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant pursuant to section 55 of the *Act*, as the 10 Day Notice complies with section 52 of the *Act*.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming

compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$800.00 for May 2019. Therefore, I find that the landlord is entitled to \$800.00 in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$396.81. Although the landlord did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit, of \$396.81, in partial satisfaction of the monetary award. No interest is payable over the period of 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 or anyone 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.

I order the landlord to retain the tenant's entire security deposit of \$396.81 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$403.19 against the tenant, for the balance due. 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 17, 2019

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Residential Tenancy Branch