



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0985218 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNRL-S, OPR

### Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$3,150.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord's property manager attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's property manager and I were the only ones who had called into this teleconference.

The landlord's property manager testified that the tenant was served the notice of dispute resolution form and supporting evidence package via registered mail on April 5, 2019. The landlord's property manager provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on April 10, 2019, five days after the landlord's property manager mailed it, in accordance with sections 88, 89, and 90 of the Act.

### Preliminary Issue – Amendment of Claim

At the hearing the landlord's property manager sought to further amend his application to include a claim for April and May 2019 rent which he testified remains outstanding.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case the landlord is seeking compensation for unpaid rent that has increased since it first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the Act, I order that the amount of the monetary order being sought in the application be amended from \$3,150.00 to \$6,300.00.

### **Issue(s) to be Decided**

Is the landlord entitled to:

- authorization to retain all of the tenant's security deposit in partial satisfaction of the monetary order requested;
- an Order of Possession for non-payment of rent;
- a monetary order for unpaid rent in the amount of \$6,300.00; and
- recover the filing fee for this application from the tenant?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written , month to month tenancy agreement starting December 29, 2018. Monthly rent is \$1,575.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$787.50. The landlord still retains this deposit.

The landlord's property manager testified that the tenant has not paid rent for the months of February, March, April, or May 2019.

On April 13, 2019, the landlord served the tenant with a copy of a 10 Day Notice to End Tenancy (the "**Notice**") by posting it on the door of the rental unit. The effective date of the Notice was April 26, 2019. The landlord entered a copy of the Notice into evidence.

To date, the tenant has not disputed the Notice.

### Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on April 29, 2019, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,575.00. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$6,300.00, comprised of the balance of unpaid rent owed from February to May, 2019 inclusive.

I find that by not paying rent for these months, the tenant has breached section 26 of the Act.

I find that the tenant did not pay the rent owed in full within the five days following the receipt of the Notice, as granted under section 46 (4) of the Act, and that he did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, April 26, 2019.

Section 7 of the Act states:

#### **Liability for not complying with this Act or a tenancy agreement**

**7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Therefore, I find that the landlord is entitled to a monetary order of \$6,300.00 for unpaid rent owed by May 1, 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.

Pursuant to section 72(2) of the Act, I find the landlord is entitled to retain the security deposit of \$787.50 in partial satisfaction of the amount owed for unpaid rent by the tenant. I order that the tenant pay the landlord the balance of the rent owed (\$5,521.50).

### Conclusion

Pursuant to section 67 and 72 of the Act, I order that the tenant pay the landlord \$5,621.50, representing the balance of the rental arrears and the filing fee for this application.

Pursuant to section 55 of the Act, I order that the tenant deliver full and peaceable vacant possession and occupation of the rental unit to the landlord, within two days of being served this order by the landlord

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 10, 2019

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Residential Tenancy Branch