



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, FFL

### 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, pursuant to sections 46 and 55; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:11 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord and her agent attended the hearing and were 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 and her agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant was served the notice of dispute resolution package by registered mail on May 11, 2019. The landlord's agent provided the Canada Post Tracking Number to confirm this registered mailing. I find that the tenant was deemed served with this package on May 16, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord and her agent not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent provided the following undisputed testimony. This tenancy began in March or April of 2008 and is currently ongoing. Monthly rent in the amount of \$2,000.00 is payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant to the landlord.

The landlord's agent testified that on April 15, 2019 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of April 29, 2019 via registered mail. The Canada Post tracking number was provided to evidence this registered mailing.

The landlord's agent testified that the tenant has not paid rent since October of 2017. The landlord's agent testified that the landlord has made previous applications to end tenancy for unpaid rent but the previous Notices to End Tenancy for Unpaid Rent did not comply with the form and content requirements of section 52 of the *Act*.

### Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenant by sending a copy by registered mail. I accept the landlord's agent's testimony that the 10 Day Notice was sent to the tenant by registered mail on April 15, 2019. I find that the tenant was deemed served with the 10 Day Notice on April 20, 2019, five days after its mailing, in accordance with sections 88 and 90 of the *Act*.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

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

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

Based on the undisputed evidence of the landlord and her agent, I find that the tenant has not paid any rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the corrected effective date of the notice.

In accordance with section 53 of the *Act*, the corrected effective date of the 10 Day Notice is April 30, 2019. As the tenant has not vacated the subject rental property, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in her application I find that she is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit,

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

Pursuant to section 72(2) of the *Act*, I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit,

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: June 24, 2019

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Residential Tenancy Branch