



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PRINCESS DAPHNE APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR OPC MNSD FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on July 9, 2019. The landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Landlord attended the hearing and provided testimony. The tenant did not attend the hearing. The Landlord testified that she sent the application package, along with supporting evidence to the tenant on June 25, 2019, by registered mail. I find the Tenant is deemed to have received this package on June 30, 2019, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord has requested to amend her application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

#### **Amending an application at the hearing**

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.

Further, the Landlord requested to amend her application to withdraw her request to retain the security deposit, as she wishes to hold this deposit in case there is damage to the rental unit at the end of the tenancy. In consideration of both of these requests, I hereby amend the Landlord's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Issues

The Landlord is seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues both parties applied for, and based on the evidence before me, I find the most pressing and related issues in this application are related to the payment/non-payment of rent and the order of possession (whether or not the tenancy will continue, or end, based on the 10 Day Notice issued.) As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds in both applications with the exception of the following grounds:

- an order of possession based on a 10-Day Notice (the Notice) for unpaid rent or utilities; and,
- a monetary order for the Landlord for unpaid rent or utilities.

#### Issue(s) to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?

#### Background and Evidence

The Landlord testified that rent, in the amount of \$870.00, is due on the first day of each month, and that she holds a security deposit of \$435.00.

The Landlord testified that she issued several Notices over the last couple of months, due to unpaid rent. The Landlord issued the first 10 Day Notice on March 4, 2019, by posting it to the Tenant's door. Another notice was issued in April and another one in May of 2019, for the same reason. The Landlord provided a fulsome account of what the Tenant has paid, and what is currently owed. This is summarized as follows:

<b>Date</b>	<b>Item</b>	<b>Amount Due</b>	<b>Amount Paid</b>	<b>Accrued Balance Owing</b>
February 2019	Unpaid rent	\$100.00		\$100.00
March 1, 2019	Rent Due	\$870.00		\$970.00
March 10, 2019	Rent Payment		\$870.00	\$100.00
April 1, 2019	Rent Due	\$870.00		\$970.00
April 15, 2019	Rent Payment		\$870.00	\$100.00
May 1, 2019	Rent Due	\$870.00		\$970.00
May 13, 2019	Rent Payment		\$870.00	\$100.00

June 1, 2019	Rent Due	\$870.00	\$970.00
Sometime in June	Rent Payment	\$870.00	\$100.00
July 1, 2019	Rent Due	\$870.00	\$970.00
<b>Total Accrued Balance</b>			<b>\$970.00</b>

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant owed past due rent at the time the 10 Day Notice was issued. The landlord served the 10 Day Notice to the Tenant by posting a copy to his door on March 4, 2019, for \$970.00 in unpaid rent. I find the Tenant is deemed to have received the 10 Day Notice on March 7, 2019, the 3<sup>rd</sup> day after it was posted, pursuant to section 88, 89 and 90 of the *Act*.

The Tenant had 5 days, after receipt, to pay rent in full or file an application for dispute resolution. Although the tenant made several partial payments outside of this window, the evidence before me indicates that the Tenant did not pay the total balance outstanding within 5 days of being served with the first 10 Day Notice. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay \$970.00 in past due rent.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent as above	\$970.00
Other:	
Filing fee	\$100.00
<b>TOTAL:</b>	<b>\$1,070.00</b>

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,070.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: July 11, 2019

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Residential Tenancy Branch