



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR, FFL;    CNR, FFT

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 6, 2019 ("second 10 Day Notice"), pursuant to section 46;
- authorization to recover the filing fee for his application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 12 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the associate broker for the landlord company named in this application, which is the property manager for the owner of the rental unit, and that he had permission to speak on its behalf at this hearing. The landlord confirmed that he had permission to represent the owner of the rental unit at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on June 21, 2019, by way of registered mail. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on June 26, 2019, five days after its registered mailing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord testified that the tenant was served with the landlord's second 10 Day Notice on June 6, 2019, by way of posting to his rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's second 10 Day Notice on June 9, 2019, three days after its posting. The tenant indicated that he received the 10 Day Notice on June 6, 2019, by way of posting to his door, when he applied to dispute it.

The landlord testified that he served the tenant with the landlord's 10 Day Notice, dated May 6, 2019 ("first 10 Day Notice") on the same date by way of posting to his rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's first 10 Day Notice on May 9, 2019, three days after its posting.

#### Preliminary Issue - Amendment to 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 July 2019 rent of \$2,700.00 and late rent fee of \$25.00.

The tenant is aware that rent is due on the first day of each month. 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 rent, the landlord would pursue all unpaid rent and late fees at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent and late fees, despite the fact that he did not attend this hearing.

#### Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

#### 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?

Is the landlord entitled to recover the filing fee for its application?

#### Background and Evidence

The landlord testified regarding the following facts. This tenancy began on March 1, 2019 for a fixed term ending on August 31, 2019. Monthly rent in the amount of \$2,700.00 is payable on the first day of each month. A security deposit of \$1,350.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession for unpaid rent based on the two 10 Day Notices from May and June 2019. He confirmed that he issued the two 10 Day Notices for unpaid rent of \$2,700.00, for May and June 2019. He stated that the tenant did not dispute the first 10 Day Notice in his application, only the second 10 Day Notice.

The landlord seeks a monetary order of \$8,100.00 for unpaid rent, at \$2,700.00 for each month from May to July 2019. The landlord also seeks \$75.00 for late fees, at \$25.00 for each month from May to July 2019.

The landlord also included FOB repair fees of \$315.00 in his monetary order worksheet. However, I notified the landlord that he did not file an amendment to the landlord's application to ask for this monetary relief, he only applied for unpaid rent. I informed the landlord that he had to file a new application to apply for this FOB repair relief, to give the tenant notice of this claim, which is unrelated to unpaid rent.

### Analysis

The landlord provided undisputed evidence, as the tenant did not attend this hearing. The tenant failed to pay the full rent due on June 1, 2019, within five days of being deemed to have received the second 10 Day Notice. The tenant filed an application to dispute the notice on June 14, 2019, pursuant to section 46(4) of the *Act*, within the five day time limit. The tenant did not appear at this hearing in order to provide evidence. The tenant did not dispute the first 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on June 19, 2019, the effective date on the second 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by June 19, 2019. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month in this case. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate a 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 \$2,700.00 for each month from May to July 2019. Therefore, I find that the landlord is entitled to a monetary order of \$8,100.00 in unpaid rent from May to July 2019. This hearing occurred on July 25, 2019. I find that the landlord is entitled to a full month's rent for July 2019 of \$2,700.00. The landlord has not taken back possession of the unit, may need to enforce the order of possession against the tenant, may need to clean and repair damages in the unit, and may need to advertise the unit to find a new tenant.

I award the landlord \$75.00 total in late rent fees from May to June 2019, at \$25.00 for each month. I find that full rent was due by the first day of each month and the parties' written tenancy agreement states that rent received late is subject to a late fee of \$25.00. The landlord provided for this \$25.00 late fee in clause 12 of the parties' written tenancy agreement, as required by sections 5(1)(d) and (2) of the *Regulation*.

The landlord continues to hold the tenant's security deposit of \$1,350.00. Over the period of this tenancy, no interest is payable on the deposit. Although the landlord did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$1,350.00 in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service 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 issue a monetary order in the landlord's favour in the amount of \$6,925.00 against the tenant. 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.

I order the landlord to retain the tenant's entire security deposit of \$1,350.00 in partial satisfaction of the monetary award.

The tenant's entire application is dismissed without leave to reapply.

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 25, 2019

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Residential Tenancy Branch