



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Review Hearing Decision

Dispute Codes      MNRL-S, OPR

### Introduction

On April 12, 2019 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent or utilities;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

### Preliminary Matters

The parties had a dispute resolution hearing scheduled on May 20, 2019. The Landlord attended the hearing; however, no one appeared for the Tenant. In the decision dated May 31, 2019, the Arbitrator awarded an order of possession, as well as a monetary order for unpaid rent to the Landlord. The Tenant applied for a review consideration on June 4, 2019 and was granted a new hearing based on the fact that he did not receive the Landlord’s Application.

The Landlord and the Tenant attended the review hearing at the appointed date and time and provided affirmed testimony.

The Landlord testified the Application and documentary evidence package was served to the Tenant by registered mail on April 19, 2019. A copy of the Canada Post registered mail receipt was submitted in support. The Tenant stated that he is away for long periods of time for work purposes and that he did not receive the registered

mailing. The Tenant stated that he served the Landlord in person with the review hearing package on June 4, 2019. The Landlord stated that the Tenant sent the package to the Landlord's Father; however, he was able to retrieve the package shortly thereafter. Both parties indicated that they were willing to proceed with the review hearing today. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on April 24, 2019, the fifth day after the registered mailing.

The parties were given an 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.

#### Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 38 and 72 of the *Act*?
3. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2014. Currently, the Tenant pays rent in the amount of \$1,800.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$900.00 which the Landlord continues to hold.

The Landlord stated that the Tenant only paid half of the rent for March 2019 in the amount of \$900.00. The Landlord stated that the Tenant failed to pay rent in full for April 2019. The Landlord stated that he subsequently served the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 2, 2019 (the "10 Day Notice") with

an effective vacancy date of April 16, 2019, by posting it to the Tenant's door on April 2, 2019. The Landlord provided a signed proof of service document in support.

The Landlord stated that the Tenant paid rent in full for May and June 2019; however, has yet to pay rent for July 2019. The Landlord stated that he is seeking an amended monetary order in the amount of \$4,500.00 to include the unpaid rent for July 2019. The Landlord is also seeking an order of possession based on the unpaid rent. The Landlord stated that he would like to retain the Tenant's security deposit in partial satisfaction of his claim.

In response, the Tenant stated that he did not receive the 10 Day Notice dated April 2, 2019 posted to his door. The Tenant stated that he was out of town for work. The Landlord stated that the Tenant has two other roommates who may have collected the notice in that time.

The Tenant confirmed that he failed to pay rent to the Landlord when due for March, April, and July 2019. The Tenant stated that he withheld half of March 2019 rent and all of the rent for April 2019, as the furnace in the rental unit broke and that the Landlord did not repair it in a timely manner. As a result, the Tenant felt justified in not paying the rent owed to the Landlord. The Tenant also confirmed that he has not yet paid rent to the Landlord for July 2019, as he was unsure if he would need to move out, according to the order of possession.

### Analysis

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

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this Act, the Regulations or the Tenancy Agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the *Act* states 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.

I find based on the Landlord's testimony and proof of service, that the Landlord served the 10 Day Notice dated April 2, 2019 with an effective vacancy date of April 16, 2019, to the Tenant by posting it to the Tenant's door on April 2, 2019. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on April 7, 2019.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until April 12, 2019 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution. The Tenant did neither.

I accept the Landlord's testimony that after service of the 10 Day Notice, the Tenant failed to pay the remaining balance of rent owing in the amount of \$900.00 for March 2019, and has also failed to pay rent when due for April and July, 2019. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, April 16, 2019, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. I find that the order of possession granted by the Arbitrator in the decision dated May 31, 2019 is confirmed and may be enforced.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$4,500.00. I find that it is reasonable to vary the previous monetary order issued by the Arbitrator in the original hearing to include the unpaid rent for July 2019. Further, I find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$3,600.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$4,500.00
<i>LESS</i> security deposit:	<i>-\$900.00</i>
<b>TOTAL:</b>	<b>\$3,600.00</b>

### Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The order of possession granted by the Arbitrator in the original decision is confirmed and may be enforced.

The Landlord is granted a varied monetary order in the amount of \$3,600.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 23, 2019

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Residential Tenancy Branch