



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURY 21 ENERGY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

On June 25, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

C.S. attended the hearing as an agent for the Landlord; however, the Tenant did not make an appearance. All in attendance provided a solemn affirmation.

C.S. advised that she personally served the Tenant, without a witness, the Notice of Hearing and evidence package by hand on July 3, 2019. Based on this solemnly affirmed and undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing and evidence package.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to monetary compensation for unpaid rent?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

C.S. stated that her property management company took over the rental unit in January 2019, but they did not get any paperwork or a tenancy agreement from the previous management company. As such, she stated that she is not sure when the tenancy started. However, rent was currently established at \$750.00 per month, due on the first day of each month. She is not sure if a security deposit was paid but she assumes that it was half of the rent.

C.S. testified that the Notice was served by posting it on the Tenant's door on May 20, 2019, with a witness. She advised that the Notice indicated that \$3,380.00 was outstanding on May 1, 2019. The effective date of the Notice was noted as June 4, 2019.

She stated that the Tenant paid \$370.00 for January 2019 rent and did not pay rent for February, March, April, May, June, July, or August 2019. However, when she referenced the statement of rent ledger that was submitted as documentary evidence, she could not explain partial rent payments on February 26, 2019, February 28, 2019, March 12, 2019, March 22, 2019, or April 29, 2019.

C.S. advised that she was seeking compensation for rent arrears from January 2019 to May 2019 rent in the amount of **\$3,380.00**, but this amount outstanding may be less due to the partial payments. Nevertheless, the Tenant is still in arrears.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on May 23, 2019, three days after it was posted to the door. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on Tuesday May 28, 2019, the Tenant must have paid the rent in full or made an Application to dispute the Notice by this date at the latest. As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being deemed to have received the Notice. Furthermore, there is no evidence before me that the Tenant had a valid reason for withholding the rent pursuant to the *Act*. In addition, the Tenant did not dispute the Notice either. Ultimately, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Section 46 of the *Act*.

With respect to the Landlord's monetary claim for unpaid rent, I am satisfied that there is some rent outstanding; however, it is not entirely clear exactly how much. As such, I do not find that the Landlord is entitled to a monetary award on this Application. The Landlord's claim for a Monetary Order for unpaid rent is dismissed with leave to reapply.

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. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to keep \$100.00 from the security deposit in satisfaction of this debt.

### Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant 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.

The Landlord's claim for a Monetary Order for unpaid rent is dismissed with 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: August 22, 2019

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Residential Tenancy Branch