



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC  
                             FFL, OPRM-DR

### Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution the Tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on July 2, 2019 (the "Notice") as well as an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement. In the Landlord's Application, he sought an Order of Possession and monetary compensation based on the Notice as well as recovery of the filing fee.

Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:20 a.m. Additionally, 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 I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he served the Tenant with the Notice of Hearing and the Application on July 16, 2019. I accept the Landlord's testimony in this regard and find the Tenant/ was duly served as of July 16, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Landlord confirmed their email addresses during the hearing as well as his understanding that this Decision would be emailed to them.

The Landlord advised that the Tenant vacated the rental unit on August 29, 2019 such that the Landlord's request for an Order of Possession and the Tenant's request for an Order canceling the Notice and an Order that the Landlord comply was no longer required.

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*; rules 7.1 and 7.3 provide as follows:

#### **Commencement of Hearing:**

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

#### **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.

As the Tenant did not call into the hearing by 11:20 a.m., and the Landlord appeared and was ready to proceed, **I dismiss the entirety of the Tenant's claim without leave to reapply.**

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recovery the filing fee?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement, signed on April 3, 2019, providing that this tenancy began May 1, 2019. Monthly rent was \$1,250.00 per month and the Tenant paid a \$625.00 security deposit.

The Landlord also testified in support of his application. He stated that when the Tenant failed to pay rent for July 2019, he issued the Notice. The Notice was posted to the rental unit door on July 2, 2019.

Although the Tenant applied to dispute the Notice within the 5 days required by section 46 of the *Residential tenancy Act*, the Tenant failed to call into the hearing.

The Landlord further testified that the Tenant failed to pay rent for August 2019 and as she vacated the unit on August 29, 2019, he was unable to secure a new tenant for September 2019 such that he has now lost three month's rental income.

The Landlord also testified that the condition in which the rental unit was left by the Tenant was such that he has incurred considerable expense to clean and repair it. He also stated that he is unsure he will be able to make it read to re-rent for October 2019.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I find that the Tenant was obligated pursuant to the tenancy agreement to pay monthly rent in the amount of \$1,250.00. Section 26 of the *Act* also provides that a Tenant must pay rent when rent is due.

I accept the Landlord's undisputed evidence that the Tenant failed to pay the July and August 2019 rent when due. In doing so the Tenant is in breach of the tenancy agreement and the *Act*. As such, I find the Landlord is entitled to recovery of those amounts. Further, I accept the Landlord's evidence that the Tenant vacated the rental unit on August 29, 2019 such that the rental unit could not be re-rented for September 1, 2019; I therefore find the Tenant has caused the Landlord to suffer a loss of rent for September as well. In total I find the Landlord is entitled to recovery of the **\$3,750.00** in rent for July, August and September 2019.

As the Landlord has been successful in his application I also grant him recovery of the filing fee for a total monetary award of **\$3,850.00**.

Pursuant to sections 38, 67 and 72 I authorize the Landlord to retain the Tenant's \$625.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$3,225.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

I also grant the Landlord leave to reapply for further monetary compensation for the cost to clean and repair the rental unit, as well as further loss of rent should the rental unit remain unrented as of October 2019.

### Conclusion

The Tenant failed to call into the hearing and her application is dismissed without leave to reapply.

As the Tenant vacated the unit, the Landlord's request for an Order of Possession was no longer required.

The Landlord's request for monetary compensation for unpaid rent and loss of rent for the months July, August and September 2019 is granted. The Landlord is also entitled to recovery of the filing fee. The Landlord is authorized to retain the Tenant's security deposit of \$650.00 and is granted a Monetary Order for the balance due in the amount of **\$3,225.00**

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: September 03, 2019

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Residential Tenancy Branch