



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes OPR MNR MNDC MNSD FF

### Introduction

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

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:30 a.m. to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord testified that on September 10, 2019, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord submitted a registered mail receipt and tracking number(s) in support of service.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

### Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent and compensation for loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenancy began approximately 7 months ago. The monthly rent is \$2800.00 payable on the 15<sup>th</sup> day of each month. The landlord testified that a security deposit was not collected at the start of the tenancy. The landlord testified the tenant vacated the rental unit overnight 2 days ago but has not returned the keys.

The landlord testified that on August 26, 2019 he served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises. A witnessed proof of service of the 10 Day Notice was provided with the application.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated in the 10 Day Notice within five days of service of the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$8400.00. The landlord testified that this includes unpaid rent for June 2019, August 2019 and September 2019. The landlord submitted a copy of an NSF cheque in the amount of \$2800.00 for June 2019 rent. The landlord testified the tenant also failed to pay August and September 2019 rent. The landlord was also seeking the NSF charge but could not recall the amount of the charge nor did he provide any evidence of the charge.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based upon the undisputed testimony of the landlord and witnessed proof of service document, I am satisfied that the tenant was deemed served with the 10 Day Notice on August 29, 2019, three days after its posting, pursuant to sections 88 & 90 of the Act. The tenant would have had until September 3, 2019 to pay the outstanding amount as per the 10 Day Notice which they failed to do.

I find that the Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that a 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.

I accept the landlord's uncontested evidence and claim for outstanding rent of \$8400.00 for the months of June, August and September 2019. The landlords claim for NSF charges is dismissed due to lack of evidence.

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 for a total monetary award of \$8500.00.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$8500.00. 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.

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: October 01, 2019

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Residential Tenancy Branch