



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GOYAL HOLDINGS CORP  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **FFL OPRM-DR**

### **Introduction**

On September 18, 2019, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

*The residential tenancy agreement submitted by the landlord has no date indicating the day in the month on which the rent is due, which is necessary in order to determine the validity of the 10 Day Notice as a landlord cannot ask for rent before the day it is due.*

*As the Direct Request process is an ex parte process that does not allow for the clarification of facts, I find that I am not able to confirm when the monthly rent is due and that this fact can only be clarified in a participatory hearing.*

I have been delegated authority under the *Act* to consider the landlord's application for:

- Authorization to recover the filing fees from the tenant pursuant to section 72; and
- An order of possession and a monetary order for unpaid rent, by direct request pursuant to sections 46 and 55.

The tenant did not attend the hearing although I left the teleconference hearing connection open until 11:12 a.m. in order for the tenant to call into this hearing set for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the

teleconference system that the tenant and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was represented by building manager, MK ("landlord"). The landlord testified he served the tenant at her residential address with the Application for Dispute Resolution Proceedings by registered mail on September 25, 2019. The tracking number is listed on the cover page of this decision. The landlord advised the mailing was returned to him as unclaimed. The tenant is deemed served with the Application for Dispute Resolution in accordance with sections 89 and 90 of the *Act*.

#### Preliminary Issue

Since issuing the 10 Day Notice on September 2<sup>nd</sup>, arrears in rent for the month of October has accrued. The landlord filed an application to amend the application for a monetary order to include both September and October rent and I allowed this amendment in accordance with section 63(3)(c) of the *Act*. The landlord also sought to include rent for the month of November which I decline to adjudicate upon as rent for the month of November has not yet become due and owing.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

#### Background and Evidence

The landlord provided the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on September 25, 2018, indicating a monthly rent of \$1,250.00 for a tenancy commencing on October 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 2, 2019, for \$1,250.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of September 12, 2019;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 11:20 am on September 2, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

The landlord provided the following undisputed testimony. He retains a security deposit in the amount of \$600.00 from a previous agreement with the tenant. Rent is due on the first day of each month and the tenant usually pays rent either on the first or second day of the month. No rent has been received for the months of September or October 2019.

#### Analysis

I find the tenant was deemed served with the 10 Day Notice on September 5, 2019, three days after posting to the tenant's door in accordance with sections 89 and 90 of the *Act*.

Sections 46(4) and (5) of the *Act* state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - a. pay the overdue rent, in which case the notice has no effect, or
  - b. dispute the notice by making an application for dispute resolution.
- (5) 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
  - a. is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - b. must vacate the rental unit to which the notice relates by that date.

Based on the landlord's evidence and the Notice before me, I find that the tenant was served with an effective Notice and did not pay the overdue rent or file an application to dispute it within the 5 days. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days ended the tenancy on the effective date of the Notice. In this case, this required the tenant to vacate the premises by September 12<sup>th</sup>, automatically changed to September 15<sup>th</sup>, 10 days after the Notice was deemed served in accordance with section 53 of the *Act*. As the tenant has not yet vacated the premises, I find that the landlord is entitled to an Order of Possession effective 2 days after service.

Section 26 of the *Act* is clear, 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 find that the tenant did not have any right to deduct any portion of the rent. The tenant failed to pay the \$1,250.00 in rental arrears as of September 2 and is responsible for paying rent for the month of October as she has not yet vacated the rental unit. The landlord is entitled to compensation in the amount of \$2,500.00 pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of \$600.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
September rent	\$1,250.00
October rent	\$1,250.00
Filing fee	\$100.00
Less security deposit	(\$600.00)
<b>Total</b>	<b>\$2,000.00</b>

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants 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 **\$2,000.00**.

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: October 24, 2019

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Residential Tenancy Branch