



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CALEDONIA REALTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** FFL OPRM-DR

### **Introduction**

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agent BD ("landlord") attended the hearing by way of conference call, the tenant did not. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served by way of Registered Mail with the landlord's application for dispute resolution hearing package on October 11, 2019. The landlord provided proof of service in their evidentiary materials. In accordance with sections 88, 89, and 90 the *Act*, I find that the tenant was deemed served with the landlord's application on October 16, 2019, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 5, 2019 ("10 Day Notice") on September 5, 2019 by way of posting the notice on the tenant's door. The landlord provided proof of service in their evidentiary materials. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on September 8, 2019, three days after its posting.

Although the landlord applied for a monetary order, the landlord's agent informed me during the hearing that the tenant had paid all the outstanding rent on October 11, 2019, and the landlord no longer requires a monetary order. Accordingly, the landlord's application for a monetary order for unpaid rent was cancelled.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent?

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

### **Background and Evidence**

The landlord testified regarding the following facts. This month-to-month tenancy began on June 1, 2013, with current monthly rent in the amount of \$795.00 payable on the first day of each month. The landlord holds a security deposit in the amount of \$375.00 for this tenancy. The tenant still resides there.

The landlord issued the 10 Day Notice on September 5, 2019 to the tenant for failing to pay \$100.00 in outstanding rent. The tenant paid the \$100.00 to the landlord on October 11, 2019.

### **Analysis**

The landlord's agent provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on September 18, 2019, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by September 18, 2019. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenant has not moved out, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act* so the landlord may take full possession of the premises.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

The landlord continues to hold the tenant's security deposit of \$375.00.

### **Conclusion**

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant 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 allow the landlord to recover the \$100.00 paid for this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary claim.

The landlord withdrew their application for a monetary order for unpaid rent.

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 31, 2019

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Residential Tenancy Branch