



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on August 28, 2019, in which the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on August 6, 2019 (the "Notice") as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 9:30 a.m. on October 25, 2019. Only the Landlord's Agent, T.C., called into the hearing. He gave affirmed testimony and were provided the opportunity to present their 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 9:58 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's Agent 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's Agent testified that they served the Tenant with the Notice of Hearing and the Application on September 6, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of September 11, 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's 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's Agent testified that the Tenant moved out of the rental unit on or about September 12, 2019 such that an Order of Possession was no longer required.

The Landlord's Agent confirmed his email address during the hearing as well as his understanding that this Decision would be emailed to them.

#### Issues to be Decided

1. Is the Landlord entitled to monetary compensation based on the Notice?
2. Should the Landlord recover the filing fee?

#### Background and Evidence

The Landlord's Agent confirmed that the tenancy began October 1, 2018. Monthly rent was payable in the amount of \$1,000.00 payable on the 1<sup>st</sup> of the month.

The Tenant failed to pay rent for November 2018 and December 2018, paid \$800.00 in January and then failed to pay any more rent. The Agent stated that the Landlord is a non-resident and was trying to negotiate with the Tenant during the period of nonpayment. The Agent conceded that the Landlord should have taken steps to evict the Tenant sooner as it was clear the Tenant had no intentions of paying rent.

The Landlord issued the Notice on August 6, 2019. The Notice indicated that the sum of \$8,200.00 was outstanding as of August 1, 2019. The Agent confirmed that the Notice was incorrect as in fact the sum of \$9,200.00 was actually outstanding at the time the Notice was issued.

The Agent testified that the Notice was served on the Tenant by registered mail on August 6, 2019. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Agent confirmed that the Tenant did not pay the outstanding rent and did not apply to dispute the Notice; as noted earlier, the Tenant vacated the rental unit in mid September.

The Agent confirmed that rent is outstanding in the amount of: \$10,200.00 for the following months:

November 2018	\$200.00
December 2018	\$1,000.00
January 2019	\$1,000.00
February 2019	\$1,000.00
March 2019	\$1,000.00
April 2019	\$1,000.00
May 2019	\$1,000.00
June 2019	\$1,000.00
July 2019	\$1,000.00
August 2019	\$1,000.00
September 2019	\$1,000.00
<b>TOTAL OUTSTANDING RENT</b>	<b>\$10,200.00</b>

### Analysis

After consideration of the Landlord's undisputed testimony and evidence before me, and on a balance of probabilities I find as follows.

I find the Tenant was obligated to pay monthly rent of \$1,000.00. I accept the Landlord's Agent's testimony that aside from the first month's rent in October, and a partial payment in January 2019 of \$800.00, the Tenant failed to pay rent as required.

I also accept the Agent's testimony that the Notice was served on the Tenant by registered mail. Pursuant to section 90 of the *Act* documents served in this manner are deemed served five days later such that I find the Tenant was served as of August 11,

2019. The Notice informed the Tenant that it would be cancelled in the event the Tenant paid the outstanding rent, or made an application for dispute resolution, within five days of service. I find the Tenant failed to pay the rent and failed to make such an application.

As the Tenant has vacated the rental unit and given up possession, an Order of Possession is not required.

Section 26 of the *Act* provides that a Tenant must pay rent when rent is due. I accept the Landlord's evidence that the Tenant failed to pay rent for the vast majority of the time he was in occupation of the rental unit. I also accept the Agent's testimony that the sum of \$10,200.00 remains outstanding for unpaid rent. I find the Landlord is entitled to recover this sum from the Tenant.

As the Landlord has been successful in their Application, I find they are also entitled to recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

### Conclusion

The Landlord is granted a Monetary Order in the amount of **\$10,300.00** for unpaid rent and recovery of the filing fee. The Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 25, 2019

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Residential Tenancy Branch