



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR MT (tenant); OPR-DR (landlord)**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to sections 46 and 55;
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- A request for more time to cancel the One Month Notice pursuant to section 66.

The hearing was conducted by teleconference. KH attended as agent for the landlord (“the landlord”). The tenant RMR attended both tenants (“the tenant”).

At the outset, the agent KH stated she was referred to in error as the landlord in the tenant’s application; KH testified she is the property manager for the landlord. Accordingly, the proceedings were amended to reflect the correct corporate name of the landlord.

The tenant and the landlord provided affirmed testimony. The hearing process was

explained, and both had the opportunity to ask questions. Each party had the opportunity to make submissions, present documentary evidence, call witnesses and cross examine the other party.

The tenant RMR and the landlord acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find each party served the other in accordance with section 89 of the Act.

Preliminary matter

The landlord requested the following:

- Amendment of the application to include a request for an increase in the monetary award for outstanding rent for the months of September and October 2019 in the amount of \$700.00 each for a total monetary award requested of \$2,100.00.

The landlord submitted a copy of the Ten-Day Notice to End Tenancy for Nonpayment of Rent ("the Ten-Day Notice") dated August 15, 2019 which included a claim for nonpayment of rent up to and including that date in the amount of \$700.00; the landlord provided affirmed testimony and proof of service of the Ten-Day Notice on the tenant on August 15, 2019. The landlord also provided uncontracted affirmed testimony that the tenant had not paid any rent since that time and rent for the months of September and October 2019 had subsequently accrued.

The landlord submitted testimony that the tenant paid a security deposit of \$350.00 at the beginning of the tenancy which the landlord holds. The tenant has not provided written authorization to the landlord to apply the security deposit to outstanding rent.

Rule 4 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

In consideration of the evidence filed and the testimony of the landlord, further to Rule 4, I find the tenant could reasonably have anticipated that the landlord would claim a monetary order for outstanding rent which accrued following the service of the Ten-Day Notice as well as authorization to apply the security deposit the landlord holds to the monetary award. I accordingly allow the landlord to amend the application as sought.

The landlord clarified the landlord's claim as follows:

ITEM	AMOUNT
Rent	\$2,100.00
(Less security deposit)	(\$350.00)
Total Monetary Award Requested	\$1,750.00

Issue(s) to be Decided

Is the landlord entitled to:

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice ") pursuant to sections 46 and 55;
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.

Is the tenant entitled to:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") pursuant to section 46;
- A request for more time to cancel the One Month Notice pursuant to section 66.

Background and Evidence

The landlord testified that the parties entered into a signed residential tenancy agreement commencing August 1, 2017. Rent is \$700.00 a month payable on the first of the month. The landlord submitted a copy of the agreement signed by both parties.

The landlord testified the tenant paid a security deposit at the start of the tenancy, of \$350.00 which is held by the landlord. The tenant has not provided any written authorization to the landlord to retain the deposit.

The landlord issued the Ten-Day Notice which the landlord testified the landlord served by posting to the tenant's door on August 15, 2019, thereby affecting service under section 90 on August 18, 2019 claiming unpaid rent of \$700.00. The landlord filed a witnessed Proof of Service Notice to End Tenancy form.

The landlord submitted a copy of the Ten-Day Notice with an effective vacancy date of

August 29, 2019 as evidence. The Notice requires the tenant to pay the rent and utilities to the landlord or file an Application for Dispute Resolution within five days.

The landlord testified the tenant did not pay the rent owing or file an Application for Dispute resolution within five days.

The tenant has made no subsequent payments and continued to reside in the rental unit.

The tenant filed an Application for Dispute Resolution outside the five-day period, on September 10, 2019. The tenant requested an extension of time to file the dispute testifying that he was very sick and unable to do so earlier. The tenant called BS as a witness who gave affirmed testimony that he “didn’t know what happened” after the tenant had been served. The tenant submitted no documentary evidence in support of his assertion that he was unable to file a dispute within the five-day period.

The landlord submitted the following in support of the claim for outstanding rent:

- a monetary worksheet

The landlord provided uncontradicted testimony that rent is owing in the amount of \$2,100.00. The tenant agreed that rent is owing in that amount. However, the tenant testified that he told the landlord he would pay the outstanding rent and the landlord refused to accept it.

The landlord denied that the landlord refused to accept outstanding rent. The landlord denied that the tenant offered to pay the rent. During the hearing, the tenant asked for more time to pay the rent. The landlord declined.

The landlord requested a monetary order for outstanding rent of \$2,100.00, and authorization to apply the security deposit to the monetary award for a total award requested of \$350.00

The landlord requested an order of possession effective two days after service.

A summary of the landlord’s claim follows:

ITEM	AMOUNT
Outstanding rent	\$2,100.00

(Less deposit)	(\$350.00)
Monetary Order Requested	\$1,750.00

Analysis

I have reviewed all documentary evidence and testimony.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenant was served with the Ten-Day Notice on August 18, 2019 in accordance with sections 88 and 90 of the *Act*.

I find the tenant did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

I find the tenant has not provided credible testimony that he was unable to file a dispute because he was ill. The tenant did not submit any documentary evidence in support of his assertion and his witness failed to corroborate the tenant's illness and inability to do so. I therefore find the tenant has not met the burden of proof on a balance of probabilities that the time limit for the filing of the dispute should be extended. I find the tenant has not established a reasonable explanation for why he was unable to file the dispute within the time limit and why an extension should be granted. I therefore dismiss the tenant's application for more time to file the application to dispute the Ten-Day Notice without leave to reapply.

As I have dismissed the tenant's application, therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice of August 29, 2019 requiring the tenant to vacate the rental unit by that date.

As the tenant continued to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service. The landlord requested that the effective date of the order be November 15, 2019 at 1:00 PM.

Based on the evidence of the landlord, I find the landlord is entitled to a monetary order pursuant to section 67 in the amount of \$2,100.00 for unpaid rent. I give considerable weight to the landlord's testimony supported by documentary evidence that the tenant owes the rent claimed by the landlord. The landlord was articulate and credible in all

respects. I give less weight to the tenant's testimony. I find the tenant has failed to meet the burden of proof on a balance of probabilities that he offered the outstanding rent to the landlord and that the landlord declined to accept it.

The landlord has not requested reimbursement of the filing fee.

Further to the offsetting provisions of section 72, the landlord is entitled to apply the security deposit of \$350.00 to the monetary award.

A summary of my monetary finding follows:

ITEM	AMOUNT
Outstanding rent	\$2,100.00
(Less deposit)	(\$350.00)
Monetary Order Requested	\$1,750.00

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Conclusion

I grant a monetary order to the landlord in the amount of **\$1,750.00**.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I also grant the landlord an order of possession effective November 15, 2019 at 1:00 PM after service on the tenant.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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 29, 2019

Residential Tenancy Branch