



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S OPR FFL

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The landlord and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The participants provided affirmed testimony during the hearing.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### *Preliminary and Procedural matters-*

#### **#1-**

At the beginning of the hearing, the evidence was discussed.

The tenant denied receiving the evidence of the landlord; the landlord said the evidence was served personally on the tenant by another individual, who signed a document to that effect. That document was submitted by the landlord.

The landlord was questioned about why she did not file her evidence until October 15, 2019, so long after her application date of September 9, 2019. The landlord said that

she did not live near the rental unit and that she provided the evidence as soon as she could.

The tenant confirmed receiving the landlord's application for dispute resolution and notice of hearing package.

Section 2.5 of the Rules states that an applicant should submit with their application a detailed calculation of any monetary claim being made, a copy of the Notice to end a tenancy, and copies of all other documentary and digital evidence to be relied upon at the hearing.

I do not accept the landlord's assertion that she was unable to provide her documentary evidence with her application for dispute resolution. I therefore have excluded all of her evidence, with the exception of a copy of the Notice upon which this dispute relates. I, however, determined that I would still proceed with the hearing and allow the landlord to speak of her evidence.

The tenant submitted that she mailed in her evidence two weeks ago, and provided the addresses she used in mailing. The landlord denied receiving any evidence and the Residential Tenancy Branch ("RTB") system did not show evidence from the tenant.

Although not requested, I decline to adjourn this hearing to deal with the tenant's evidence issues, as I find she provided no compelling evidence as to when she mailed her evidence. I allowed the tenant to speak of her evidence, so long as it related to the issues on the landlord's application.

## **#2-**

I refuse to consider the portion of the landlord's application for monetary compensation due to section 59(5)(c) of the *Act* because that portion of the application did not provide sufficient particulars for compensation, as is required by section 59(2)(b) of the *Act* and Rule 2.5 of the Rules.

Specifically, the landlord failed to provide a detailed calculation of her claim for the \$2,506.00.

I find that proceeding with the landlord's monetary claim at this hearing would be prejudicial to the tenant, as the absence of particulars that set out how the landlord arrived at the amounts being claimed makes it difficult, if not impossible, for the tenant

to adequately prepare a response to the landlord's claim. As noted, the landlord applied on September 9, 2019, which provided significant time for her to comply with Rule 2.5.

Given the above, the landlord is granted liberty to reapply for her monetary claim, but is reminded to provide full particulars of their monetary claim. The landlord may include any additional pages to set out the details of her monetary claim in her application, as required. The landlord is advised that there is a monetary order worksheet available on the RTB website.

### **#3-**

The landlord named as a tenant, JD; however, the only listed tenant in the landlord's application was the respondent here.

I have therefore excluded JD from any further consideration in this matter.

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

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent and to recovery of the filing fee paid for this application?

### **Background and Evidence**

The landlord submitted that on August 20, 2019, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by personal service, listing unpaid rent of \$186.00 owed as of May 1, 2019. The effective move-out date was August 30, 2019.

The Notice informed the tenant that she had five (5) days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenant is presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The landlord asserted that since the issuance of the Notice, the tenant failed to pay the full amount listed on the Notice within 5 days and has not paid rent for the last two months.

The tenant did dispute receiving the Notice, but said that she did pay the landlord the full amount. The tenant said she could provide me with proof of when or if the rent deficiency was paid; however, she has not done so in advance of the hearing.

The tenant said she has vacated the rental unit, but was unclear of the date she moved out.

*Landlord's response-*

The landlord submitted that as of 4 weeks ago when she stayed in the basement suite, the tenant was still in there. The landlord submitted further that the tenant's personal property is still in the rental unit.

*Tenant's response-*

The tenant denied her personal property was in the rental unit, but there was a squatter in the rental unit.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

I find the landlord submitted sufficient evidence to prove that the tenant was served the Notice, that the tenant did not pay the outstanding rent or file an application in dispute of the Notice within 5 days of service and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, August 30, 2019.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I also grant the landlord a monetary award of \$100.00 for recovery of the filing fee paid for their application and issue her a monetary order in that amount. The landlord is advised that she may deduct \$100.00 from the tenant's security deposit if she so chooses.

### Conclusion

The landlord's application for an order of possession for the rental unit and recovery of their filing fee has been granted.

The landlord is granted recovery of her filing fee and she has been issued a monetary order in the amount of \$100.00.

The portion of the landlord's application seeking monetary compensation is refused due to failing to provide a detailed calculation. The landlord is at liberty to reapply for her monetary claim.

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

---

Residential Tenancy Branch