



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing 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;
- authorization to retain the tenant's security deposit, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 28 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on October 16, 2019, by way of registered mail. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on October 21, 2019, five days after its registered mailing.

The landlord confirmed that he personally served the tenant with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 8, 2019 ("10 Day Notice"), on the same date. The landlord provided a signed, witnessed proof of service and confirmed that his son witnessed the service. The effective move-out date on the notice is September 17, 2019. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's 10 Day Notice on September 8, 2019.

### Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include November 2019 rent of \$850.00. I find that the tenant is aware that rent is due as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his full rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that he did not attend this hearing.

#### Issues to be Decided

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

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

Is the landlord entitled to retain the tenant's security deposit?

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

#### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on December 1, 2015. Monthly rent in the amount of \$850.00 is payable on the first day of each month. A security deposit of \$350.00 was paid by the tenant to the landlord. No written tenancy agreement was signed by the parties, only a verbal agreement was reached. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession based on the 10 Day Notice. The landlord issued the 10 Day Notice for unpaid rent of \$3,250.00 due on September 7, 2019. The landlord testified that the tenant failed to pay rent of \$850.00 for May 2019, \$350.00 for June 2019, \$350.00 for July 2019, \$850.00 for August 2019, and \$850.00 for September 2019, totalling \$3,250.00. The landlord maintained that the tenant also failed to pay rent of \$850.00 for October 2019 and \$850.00 for November 2019. The

landlord seeks a monetary order of \$4,950.00 for unpaid rent plus the \$100.00 application filing fee.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on September 7, 2019, within five days of receiving the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving 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 corrected 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. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, the landlord said was on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$4,950.00 from May to November 2019. Accordingly, I find that the landlord is entitled to rental arrears of \$4,950.00 from the tenant.

The landlord received the tenant's security deposit of \$350.00. Over the period of this tenancy, no interest is payable on the security deposit. The landlord applied to retain the security deposit and in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$350.00 in partial satisfaction of the monetary award.

The landlord claimed that he used the security deposit to cover an extra occupant fee for two other tenants that lived in the rental unit previously, but I find that the landlord failed to provide documentary evidence of the extra occupant fee, when it was applied, who it was for, and that the security deposit would be used to offset it. Therefore, I find

that the landlord did not use the security deposit against rent, and it is still available for this application.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

### 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 order the landlord to retain the tenant's entire security deposit of \$350.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$4,700.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: November 14, 2019

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Residential Tenancy Branch