



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNRL-S, OPU, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for unpaid rent, to retain the security deposit towards compensation owed, for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and a family member (the “Landlord”) were present for the hearing while no one called in for the Tenant. The parties present were affirmed to be truthful in their testimony and stated that they served the Tenant with the Notice of Dispute Resolution Proceeding package and a copy of their evidence in person on September 18, 2019. I accept the affirmed testimony and find that the Tenant was served in accordance with Section 89 of the *Act* on this date.

### Issues to be Decided

Is the Landlord entitled to monetary compensation for unpaid rent?

Should the Landlord be authorized to retain the security deposit towards compensation owed?

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Landlord testified that the tenancy started approximately one year ago. There was no written tenancy agreement and the tenancy was arranged through a verbal agreement instead. Rent in the amount of \$3,500.00 is due on the first day of each month and the Tenant paid a security deposit of \$1,750.00 at the start of the tenancy.

The Landlord stated that they served the Tenant with a 10 Day Notice on July 18, 2019 by posting the notice on the door of the rental unit. A copy of the 10 Day Notice was submitted into evidence and states that \$8,755.00 was unpaid as due on July 1, 2019. The Landlord stated that the Tenant had been making partial payments which led to the amount outstanding as of July 1, 2019. They also noted that the rent amount includes utilities.

The Landlord stated that they did not receive notification that the Tenant had applied to dispute the 10 Day Notice. They stated that the Tenant would make partial payments and sign promissory notes for further payments which were not followed through on. Copies of these notes were submitted into evidence.

The Landlord applied for monetary compensation for unpaid rent in the amount of \$8,755.00. At the hearing they stated that the Tenant now owes \$20,255.00 in unpaid rent due to no rent received for August, September, October or November 2019. However, the Landlord provided unclear testimony regarding the amounts paid by the Tenant since service of the 10 Day Notice.

At first the Landlord stated that the last payment from the Tenant was July 6, 2019 in the amount of \$1,150.00, but later clarified that the Tenant paid \$2,500.00 on July 25, 2019 as stated on a note signed by the Tenant. The Landlord stated that this left \$6,255.00 owing from the amount on the 10 Day Notice plus four months of unpaid rent for a total of \$20,255.00.

However, after a note submitted into evidence was pointed out as it indicates payments of \$900.00 on August 16, 2019 and \$3,500.00 on August 23, 2019, the Landlord agreed that these amounts were also paid. The Landlord stated that therefore the total owing is \$20,255.00 minus the two payments made in August 2019.

In a note signed by the Tenant on July 24, 2019 the Tenant states that \$8,755.00 was owing and that after a payment of \$2,500.00 on July 24, 2019 an amount of \$6,255.00 is still outstanding as of this date.

### Analysis

I accept the testimony of the Landlord that the Tenant was served with a 10 Day Notice on July 18, 2019. As stated in Section 46(4) of the *Act*, a tenant has 5 days to dispute the notice or pay the outstanding rent. However, I have no evidence before me that the Tenant applied to dispute the 10 Day Notice.

I also find that the outstanding rent was not paid within 5 days, based on the testimony of the Landlord as well as the evidence. In a note signed by the Tenant on July 24, 2019, the Tenant writes that a \$2,500.00 payment was made which leaves a balance of \$6,255.00. Therefore, I accept the evidence before me that supports the Landlord's testimony that the entire balance owing was not paid within 5 days.

As such, I find that Section 46(5) of the *Act* applies, and the Tenant is conclusively presumed to have accepted that the tenancy ends:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

Accordingly, I find that the Landlord is entitled to an Order of Possession pursuant to Section 55 of the *Act*. Upon review of the 10 Day Notice I find that the form and content comply with Section 52 of the *Act*, and therefore I grant the Landlord a two-day Order of Possession to serve on the Tenant.

Regarding the Landlord's claim for unpaid rent, I note that the onus is on the Landlord to prove their claim, on a balance of probabilities. When a monetary amount is claimed, it is the party with the burden of proof who must establish the value of their loss.

In this matter, I am not satisfied as to the amount owing. While I do accept that the Tenant has not paid the full rent amount for many months and that there remains an amount of rent outstanding, I do not find that the Landlord was clear as to the amount owing such that I find I cannot award a Monetary Order for unpaid rent.

The Landlord filed the Application for Dispute Resolution on September 9, 2019 seeking an amount of \$8,755.00 which was the amount owing as stated on the 10 Day Notice. However, the evidence before me shows that payments were made in July and August 2019, and along with the monthly rent amount owing does not add up to \$8,755.00 owing as of September 9, 2019.

The Landlord also presented unclear testimony during the hearing regarding the amounts paid and amounts owing such that I find I cannot accept the testimony of how much is owed. As stated by rule 2.5 of the *Residential Tenancy Branch Rules of Procedure*, a party filing a monetary claim should submit a detailed calculation of the claim along with the application.

The Landlord submitted evidence that contradicted their testimony during the hearing regarding the amount of unpaid rent, some of which was also corrected when pointed out. Therefore, I decline to award compensation for unpaid rent as I am not satisfied as to the amount owing at

the time of the application or the amount currently owing. However, as I do find that an amount of rent remains owing, I dismiss the Landlord's monetary claim, with leave to reapply.

As the Landlord was successful with their application for an Order of Possession, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlord may retain this amount from the security deposit at the end of the tenancy.

### Conclusion

The Landlord's monetary claim is dismissed, with leave to reapply.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to Section 72 of the *Act*, I grant the Landlord the recovery of the filing fee in the amount of \$100.00. The Landlord may retain this amount from the security deposit at the end of the tenancy.

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 19, 2019

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Residential Tenancy Branch