



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPR MNR FF  
Tenant: CNC CNR

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 19, 2019. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing, which lasted 15 minutes. However, the Tenant did not. The Landlord stated that he served the Tenant with his application and evidence by registered mail on October 25, 2019. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed to have received this package on October 30, 2019, the fifth day after it was mailed.

The Landlord has requested to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

#### **Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlord's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The hearing was by telephone conference and began promptly, as scheduled, at 1:30 PM Pacific Time on November 19, 2019, as per the Notice of a Dispute Resolution Hearing provided to the parties. The line remained open while the phone system was monitored for 15 minutes and the only participant who called into the hearing during this time was the Landlord who was ready to proceed. The Landlord testified that the Tenant continues to occupy the rental unit and still owes rent.

After the waiting 15 minutes, the Tenant's application was **dismissed in full, without leave to reapply**.

Section 55 of the *Act* applies and states:

#### **Order of possession for the landlord**

**55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if**

**(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

**(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession, effective 2 days after service.

#### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?

#### Background and Evidence

The Landlord testified that rent in the amount of \$920.00 is due on the first of each month. The Landlord stated that he holds a security deposit of \$445.00.

The Landlord stated that he sent, by registered mail, the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) in the amount of \$920.00 on October 3, 2019. Proof of service was provided into evidence. The Landlord stated that the Tenant has not made any payments since that time, and he now owes November rent as well, bringing the total owing to \$1,840.00.

#### Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I find there is insufficient evidence the Tenant had any right under the *Act* to withhold rent. With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the Landlord's documentary evidence and testimony before me to demonstrate that the Tenant owes and has failed to pay \$1,840.00 in rent.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

| <b>Claim</b>                                | <b>Amount</b>     |
|---|-------------------|
| Cumulative unpaid rent as above             | \$1,840.00        |
| Other:                                      |                   |
| Filing fee                                  | \$100.00          |
| <b>Less:</b>                                |                   |
| Security Deposit currently held by Landlord | (\$445.00)        |
| <b>TOTAL:</b>                               | <b>\$1,495.00</b> |

### Conclusion

Pursuant to section 55 of the Act, the Landlord is granted an order of possession effective **two days 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 and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,495.00**. 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.

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

---

Residential Tenancy Branch