



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing, by teleconference, was held on November 26, 2019. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Landlord attended the hearing and provided testimony. The Tenant did not attend the hearing. The Landlord testified that they sent the Notice of Hearing package to the Tenant by registered mail on September 20, 2019. The Landlord provided proof of registered mailing. I find the Tenant received this package on September 25, 2019, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

In the hearing, the Landlord stated that they would like to amend their application and they are only looking for an order of possession in today's proceeding. I hereby amend the Landlord's application accordingly. The only issue that will be addressed today is whether or not the Landlord is entitled to an order of possession. The Landlord is granted leave to reapply for the remaining grounds.

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.

### Issue(s) to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent or utilities?

### Background and Evidence

The Landlord testified that current rent is \$971.00 and is due on the first day of each month.

The Landlord explained that over the last 2-3 years, the Tenant has fallen behind on rent payments. The Landlord explained that each year, when rent is increased, the Tenant fails to pay the new rent rate, and only pays the original rent amount. The Landlord explained that this habit started in 2017, and went into 2018, and has continued into 2019. The Landlord stated that the Tenant has also, on top of these smaller monthly shortfalls, been short by several hundred dollars on several occasions. The Landlord estimated that the Tenant now owes well over a thousand dollars, which has accrued over the last couple years. The Landlord was able to explain some of the specifics but had not accurately accounted for exactly what the total amount owing is with a worksheet. The Landlord stated his priority is to end the tenancy, because this cannot continue, rather than try to collect the sum total of all the underpayments over the last couple years.

The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Landlord provided registered mail tracking information, which shows they mailed it on August 20, 2019. The 10 Day Notice specified that \$840.00 was still unpaid at that time. However, the Landlord stated it is actually much more than that.

The Landlord stated that, since they issued the Notice, the Tenant has continued underpaying his rent. For example, the Tenant has owed \$971.00 in rent each month, since March 2019, yet he has only paid \$948.00 each month (which was his rental rate from the previous year), even after getting the Notice. The Landlord stated that this type of pattern has been happening for years.

### 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. When a Tenant does not pay rent when due, section 46(1) of the *Act* permits a Landlords to end the tenancy

by issuing a notice to end tenancy. A Tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a Tenant does not pay rent in full or dispute the notice, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the Tenant had a balance of unpaid rent owing at the time the Notice issued on August 20, 2019. Pursuant to section 88 and 90 of the *Act*, I find the Tenant is deemed to have received the Notice on August 25, 2019, the fifth day after it was mailed. Although the Landlord did not provide a monetary order worksheet showing what exactly has accrued, and when over the years, he was sufficiently able to speak to the fact that the Tenant owes at least the amount listed on the Notice, \$840.00.

The Tenant had 5 days to pay all outstanding rent in full or file an application for dispute resolution. Although the Tenant continued paying his monthly rent after getting the Notice, I note the amount he was paying was less than what was actually due, which is merely perpetuating the issue of accrued rent owing. I find there is sufficient evidence to show the Tenant failed to pay all rent outstanding, in full, within the 5 day period allowed under the *Act*, after receiving the Notice. As the Tenant did not pay in full by August 30, 2019, I find the Tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlords are entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

### Conclusion

The Landlords are 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 Landlords may file the order with the Supreme Court of British Columbia 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 26, 2019

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Residential Tenancy Branch