



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      **FFL OPRM-DR**

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$16,218 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:41 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord's agent ("**SA**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that SA and I were the only ones who had called into this teleconference.

Two days after the landlord filed this application, the landlord's agent filed an amendment to increase the amount sought (from \$12,800 to the current amount), to correct the landlord's name (it was inadvertently listed as the tenant's name prior to the amendment) and correct the address of the rental unit (to specify the rental unit was a basement suite).

SA testified that the tenant was served the notice of dispute resolution form, the amendment, and supporting evidence package via registered mail on November 8,

2019. SA provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with this package on November 13, 2019, five days after SA mailed it, in accordance with sections 88, 89, and 90 of the Act.

### Preliminary Issue – Monetary Claim

At the outset of the hearing, SA stated that the landlord was abandoning the monetary claim entirely. As such, I dismiss the landlord's application for a monetary order for \$16,218, without leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee from the tenant?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting December 1, 2018 and ending May 31, 2019. Subsequent to May 31, 2019, the tenancy became month to month. Monthly rent is \$1,800 payable on the first of each month, plus utilities which the tenant is required to prepay \$150 of at the start of every month and reconciles at the end of the year. The tenant paid the landlord a security deposit of \$900 and a pet damage deposit of \$500. The landlord still retains these deposits.

SA testified that the tenant did not pay rent (or prepay his utilities) for the months of June to October 2019 in the amount of \$9,750.

SA served a 10 Day Notice to End Tenancy (the "**Notice**") on the tenant in person on October 30, 2019 for \$9,750 in unpaid rent due on October 1, 2019. The Notice has an effective date of November 8, 2019. The landlord entered a copy of the Notice into evidence.

SA testified that the tenant did not apply to dispute the Notice within five days of service, or at all.

### **Analysis**

I have reviewed all documentary evidence provided by the landlord. I find that the tenant was served personally with the Notice on October 30, 2019.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,800 plus a \$150 prepayment for utilities. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement

Based on SA's testimony, I find that the tenant has failed to pay rental arrears in the amount of \$9,750, comprised of the balance of unpaid rent and utilities prepayment owed by October 1, 2019.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed (or any portion of it) in full within the five days granted under section 46 (4) of the Act and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

At the hearing, SA advised me that the landlord would like the order of possession to be effective December 31, 2019. As such, I find that the landlord is entitled to an order of possession effective December 31, 2019 at 1:00 pm.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100 filing fee paid for this application.

Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of the filing fee owed by the tenant.

**Conclusion**

I order that the tenant provide the landlord with vacant possession of the rental unit on or before December 31, 2019. Should the tenant fail to comply with this order, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

The landlord is provided with this order in the above terms and must serve the tenant with this order and a copy of this decision as soon as possible.

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: December 03, 2019

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Residential Tenancy Branch