



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEYUN PROPERTIES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, FFL

### Introduction

On November 18, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On November 27, 2019, this Application was set down for a participatory hearing on January 17, 2019 at 9:30 AM.

D.S. attended the hearing as an agent for the Landlord and the Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

The Landlord advised that the Notice of Hearing package was served to the Tenant by being posted to her door on November 29, 2019. He also submitted a signed proof of service document confirming service in this manner. The Tenant advised that she only received this package a couple of days ago as it was placed on her windshield. She stated that she works at a camp and is not always living at the rental unit but that she was living there in December 2019. She also stated that since December 2018, she has had problems with other tenants taking things off her door. She stated that she has no mail box, or mail slot, and that she never advised the Landlord about the issue of having documents stolen off her door. When weighing the signed proof of service against the Tenant's testimony, I find that the proof of service provides more corroborative weight of service versus simple testimony that this package was not posted to the door. As such, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Landlord's Notice of Hearing package three days after it was posted to her door.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the Landlord purchased the rental unit on or around March 2019 and that the original tenancy started on December 15, 2018. Rent was currently established at \$900.00 per month, due on the first day of each month. A security deposit of \$450.00 was also paid.

D.S. advised that the Tenant did not pay rent for June 2019, so the Notice was served to the Tenant by posting it to her door on June 10, 2019. The Notice indicated that \$900.00 was outstanding on June 1, 2019 and that the effective end date of the tenancy was June 24, 2019. The Tenant has also not paid rent since service of the Notice. He also submitted a signed proof of service document confirming service of the Notice in this manner.

The Tenant advised that she did not get this Notice.

D.S. stated that the Tenant stopped paying rent after May 2019. He stated that she would pay the rent in cash and he would go to her rental unit on the first day of each month to collect it. He contacted the Tenant frequently requesting the rent for June 2019, but she ignored him. He stated that he has a rent ledger to prove the Tenant's rent payment history, that he has receipts of rent payments, and he might have his texts to demonstrate the conversations he had with the Tenant about non-payment of rent; however, it did not occur to him to submit these documents for consideration.

The Tenant advised that she had been paying the old landlord by electronic transfer of funds, but she needed receipts from the Landlord to submit to the government for some sort of subsidy. As such, she started paying the rent in cash to D.S. on either March or May 2019, but she was not sure when exactly. She stated that she paid June 2019 rent to the Landlord in cash, but he forgot to provide her with a receipt. Even though she required a receipt for rent to present to the government, she did not pursue acquiring this month's rent receipt from the Landlord as there were obstacles in her life that required more attention and she was having problems with the Tenant downstairs. She also advised that she has not paid rent for July 2019 or onwards.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 46 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

While the Tenant claims that she paid June 2019 rent in cash and that she never received the Notice, I am sceptical of the Tenant's submissions on this point. If it was critical for her to receive a rent receipt from the Landlord in order to present it to the government to receive funding, I find that I am doubtful that had she paid June 2019 rent, that she would not have pursued getting a copy of this receipt with more urgency.

Moreover, she acknowledged that she simply did not pay any rent after July 2019 because she was having problems with the tenant below her. She confirmed that she did not have a right under the *Act* to withhold the rent. Based on her acknowledgement that she arbitrarily decided to withhold rent from July 2019 onwards, and based on my doubts of her submissions with respect to payment of June 2019 rent, I find that I am doubtful of the Tenant's credibility on the whole. I find it more likely than not that the Tenant simply decided to take it upon herself to withhold the rent as of June 1, 2019.

Regarding her claims that she did not receive the Notice, I have before me a signed proof of service document where a witness confirmed that the Landlord posted the Notice to the Tenant's door on June 10, 2019. When weighing this in conjunction with the doubts created by the Tenant's testimony, I find that the proof of service provides more corroborative weight of service. As such, I am satisfied that the Notice was posted to the door on June 10, 2019.

Therefore, the Tenant was deemed to have received the Notice on June 13, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on Tuesday June 18, 2019, the Tenant must have paid the rent in full or disputed the Notice by this day at the latest. As outlined above, I am satisfied that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being deemed to have received the Notice. Moreover, the Tenant did not establish that she had a valid reason for withholding the rent pursuant to the *Act*. In addition, the Tenant did not dispute the Notice. Ultimately, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Section 46 of the *Act*.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to deduct this amount from the security deposit.

Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant 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.

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: January 17, 2020

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Residential Tenancy Branch