



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LADHA ENTERPRISES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL, OPR, FFL

### Introduction

On November 20, 2019 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

D.E. testified that she served the Application and documentary evidence package to the Tenant by registered mail on November 29, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant confirmed that he did not submit any documentary evidence in preparation for the hearing.

The parties were given an 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. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?

2. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on December 1, 2014. The Tenant currently rents a mobile home from the Landlord in the amount of \$750.00 which is due to the Landlord on the first day of each month. The Tenant did not pay a security deposit at the start of the tenancy. The Tenant continues to occupy the rental unit.

D.E. testified the Tenant did not pay rent in full when due for June, July, August, September October and November 2019, in the amount of \$4,150.00. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent, dated November 1, 2019 (the "10 Day Notice") with an effective vacancy date of November 12, 2019. D.E. stated that the 10 Day Notice was served to the Tenant by posting it to the Tenant's door on November 2, 2019. The Landlord submitted a witnessed proof of service confirming service of the 10 Day Notice.

D.E. stated that since serving the 10 Day Notice, the Tenant has made no payments towards the outstanding balance of rent owing according to the 10 Day Notice. Furthermore, D.E. stated that the Tenant has failed to pay rent for December 2019 and January 2020. Currently, the Landlord is seeking a monetary order in the amount of \$5,650.00 for unpaid rent. The Landlord is also seeking an order of possession based on the unpaid rent as well as the return of the filing fee.

The Tenant stated that he did not receive the 10 Day Notice. The Tenant did confirm that he has failed to pay rent when due to the Landlord in the amount of \$5,650.00. The Tenant stated that he has been expecting a retroactive payment from his employer, however, he has not yet received such payment. The Tenant also stated that he is frustrated with the lack of repairs made by the Landlord to the rental unit. The Tenant stated that the roof is leaking and that his front door will not stay shut.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this Act, the Regulations or the Tenancy Agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find based on the documentary evidence oral testimony during the hearing, that the Landlord served the 10 Day Notice dated November 1, 2019 with an effective vacancy date of November 12, 2019, to the Tenant by posting it to the Tenant's door on November 2, 2019. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on November 5, 2019.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until November 10, 2019 to either pay the outstanding rent owed to the Landlord in full or make an Application for dispute resolution.

I accept the parties agreed that after service of the 10 Day Notice, the Tenant failed to pay the remaining balance of rent owing in the amount of \$4,150.00 for June, July, August, September, October and November 2019, and has also failed to pay rent when due for December 2019, and January 2020. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, November 15, 2019, pursuant to section 46(5) of the Act.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$5,650.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$5,750.00 (\$5,650.00 + \$100.00 = \$5,750.00).

### Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$5,750.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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

---

Residential Tenancy Branch