



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

**MNRL OPR**

### Introduction

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

- A monetary order for rent and/or utilities pursuant to section 67; and
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:15 a.m. to enable the tenant to call into this hearing scheduled for 11:00 a.m.

JM, the administrator for the estate of the landlord ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn 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 the landlord and I were the only ones who had called into this teleconference.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenant.

The landlord gave evidence that he served the tenant with the Application for Dispute Resolution hearing package and evidence by registered mail on November 8, 2019. The landlord provided a Canada Post tracking number and receipt for the mailing, recorded on the cover page of this decision. I find the tenant is deemed served with the Application for Dispute Resolution hearing package and the evidence 5 days after the registered mailing, pursuant to section 89 and 90 of the *Act*.

### Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be upheld?  
Is the landlord entitled to compensation for unpaid rent?

### Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began sometime in 2010 or 2011. The owner of the property died on September 14, 2017 and the landlord is the court appointed administrator of the estate. There is no record of a security deposit being taken, however the landlord contends that it would be reasonable to assume there is a half month's rent held as a deposit, or \$1,000.00.

Rent is set at \$2,000.00 per month. The tenant pays \$1,350 of the rent, while social assistance pays the additional \$650.00. Rent is due on the first day of each month. In March of 2019, the tenant began to fall behind on paying his rent, falling behind by \$500.00. In subsequent months, the tenant only paid a portion of his rent and by October 1, 2019, the tenant was in arrears of \$4,240.00. A spreadsheet of payment due dates and payments received was provided by the landlord.

On October 28, 2019, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities indicating the tenant failed to pay rent in the amount of \$4,240.00 that was due on October 1, 2019. The effective date on the Notice is November 10, 2019. The landlord provided a written proof of service document and testified that he served the Notice by posting it to the tenant's door on October 28, 2019. The landlord's assistant MT testified that the tenant personally spoke to her and confirmed he received the Notice within a day or two of the Notice being posted to his door.

Since serving the Notice, the tenant has not paid rent for November or December 2019, accruing additional arrears. The tenant is now in arrears of rent totalling \$7590.00. The landlord seeks to increase the monetary award sought to include additional rent for November and December.

The landlord testified that he is not sure if the tenant has moved out of the rental unit but suspects he is gone because the last time he checked the property the front door was left unlocked and there are notices from the hydro company and the natural gas company on the front door advising that service to the house has been discontinued. No forwarding address was given to the landlord after being served with the Notice.

### Analysis

- Order of Possession

I am satisfied the tenant was served with the Notice three days it was posted to his door, on October 31, 2019 in accordance with sections 88 and 90 of the *Act*.

Section 46 of the *Act* states:

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.

- (5) 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
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days has led to the end of the tenancy on the effective date of the notice.

The tenant was required to vacate the premises by the effective date of November 10, 2019. As this date has passed, I award the landlord an Order of Possession effective 2 days after service upon the tenant. As the landlord has provided undisputed testimony that it is unlikely the tenant continues to occupy the rental unit, I order that the landlord is at liberty to serve the Order of Possession upon the tenant by posting it to the tenant's door pursuant to section 71 of the *Act*.

- Monetary Order

Section 26 of the *Act* is clear, a 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. I accept the landlord's evidence that the tenant had no right to deduct any part of his rent and that the tenant was in arrears of rent by \$4,240.00. I award the landlord \$4,240.00 as compensation pursuant to section 67 of the *Act*.

*Residential Tenancy Policy Guideline #3* states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises. The tenant was obligated to move out of the rental unit by November 10, 2019, the effective date of the Notice. The landlord has not provided sufficient evidence to show the tenant continued to occupy the rental unit beyond that date and I decline to award the landlord additional rent for the full month of November or December 2019. I award the tenant 10 days of rent until the effective date of November 10<sup>th</sup>, ( $\$1650.00/31 \times 10 = \$532.25$ ).

The landlord continues to hold the tenant's security deposit in the amount of \$1,000.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
Rent arrears until October 1, 2019	\$4,240.00

10 days rent until November 10, 2019	\$532.25
Less security deposit	(\$1000.00)
<b>Total</b>	<b>\$3,772.40</b>

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

The landlord is at liberty to serve the Order of Possession upon the tenant by posting it to the door of the rental unit pursuant to section 71 of the *Act*. Should the tenants or anyone 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.

I issue a monetary order in the landlord's favour in the amount of **\$3,772.40**. The tenant must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: January 02, 2020

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Residential Tenancy Branch