



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

On October 31, 2019, the Landlord applied for a Direct Request 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*"), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On November 6, 2019, this Application was set down for a participatory hearing on January 9, 2019 at 11:00 AM.

K.G. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the 15-minute hearing. All in attendance provided a solemn affirmation.

K.G. advised that a Notice of Hearing and evidence package was served to the Tenant by registered mail on November 19, 2019 (the registered mail tracking number is listed on the first page of this decision). Based on this undisputed, solemnly affirmed testimony, 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 and evidence package five days after it was mailed.

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 a Monetary Order for unpaid rent?
- Is the Landlord entitled to recovery of 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.

K.G. stated that the tenancy started on August 31, 2019 and that rent was currently established at \$2,300.00 per month, due on the first day of each month. A security deposit of \$1,150.00 was also paid. The Landlord submitted a copy of the tenancy agreement as documentary evidence.

She advised that the Tenant did not pay October 2019 rent, so the Notice was served to the Tenant by posting it to his door on October 21, 2019. The Notice indicated that \$2,300.00 was outstanding on October 1, 2019 and that the effective end date of the tenancy was October 31, 2019.

She also stated that the Tenant has not paid any rent since receiving this Notice, and as of the date of the hearing, the Tenant has been in arrears in the amount of \$9,200.00. The Landlord is seeking a total monetary award in the amount of **\$9,200.00** for rent arrears comprising of \$2,300.00 from October 2019 to January 2020.

### 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 Landlords comply 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.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on October 24, 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 October 29, 2019, the Tenant must have paid the rent in full or disputed the Notice by this day at the latest. The undisputed evidence is that the Tenant did not pay the rent or make an Application, and there is no evidence before me that permitted the Tenant to withhold the rent.

As outlined above, the undisputed evidence is 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 he had a valid reason for withholding the rent pursuant to the *Act*. In addition, the Tenant did not dispute 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 Sections 46 and 55 of the *Act*.

I also find that the Landlord is entitled to a monetary award for October, November, and December 2019 rent, as well as January 2020 rent arrears. I grant the Landlord a monetary award in the amount of **\$9,200.00**, which is comprised of rent owed for the months of October to January 2020.

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 keep the security deposit in partial satisfaction of the debts.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenant to the Landlord**

October 2019 rent	\$2,300.00
November 2019 rent	\$2,300.00
December 2019 rent	\$2,300.00
January 2020 rent	\$2,300.00
Security deposit	-\$1,150.00
Filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$8,150.00</b>

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.

The Landlord is provided with a Monetary Order in the amount of **\$8,150.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 9, 2020

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Residential Tenancy Branch