



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNRL, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*;
- a monetary order for unpaid rent, pursuant to sections 26 and 67 of the *Act*; and
- recovery of the filing fee, pursuant to section 72 of the *Act*.

The tenant did not attend this hearing, although I left the connection open until 11:40 A.M. to enable the tenant to call into this teleconference scheduled for 11:00 A.M. The landlord 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 the landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the notice of hearing and evidence (the Materials) in person on November 08, 2019. I find the tenant was properly served, in accordance with section 89(1)(a) of the *Act*.

### Preliminary Issue – Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, such as when the amount of

rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord's original application claimed unpaid rent in the amount of \$3,335.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$6,455.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the Act, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$6,455.00.

#### Issues to be Decided

- Is the landlord entitled to obtain an order of possession, pursuant to section 46 and 55 of the Act?
- Is the landlord entitled to a monetary order for unpaid rent pursuant to sections 26 and 67 of the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act pursuant to section 72 of the Act?

#### Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified:

- The tenancy started in September 2018, rent is \$1,700.00 per month due on the first of each month; at the outset of the tenancy a security deposit of \$340.00 was collected and she still holds it;
- She served the tenant the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) on October 24, 2019 to the tenant and occupant PL, and occupant PL signed the proof of service form;
- On November 07, 2019 the rent in arrears was \$3,335.00 for the months of December 2018, July, August, September, October and November 2019;

- The tenant paid the balance for the month of November 2018 (\$280.00) after this application was submitted, but did not make any payments for the months of December 2019 and January 2020;
- Current rent arrears are \$6,455.00:

December 2018	1,500.00
July 2019	425.00
August 2019	425.00
September 2019	425.00
October 2019	280.00
December 2019	1,700.00
January 2020	1,700.00
<b>Total rent arrears</b>	<b>6,455.00</b>

The landlord provided the Notice, a monetary order worksheet, a written tenancy agreement and a witnessed proof of service document pertaining to the Notice.

#### Analysis

Section 88 (a) of the Act states:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a) by leaving a copy with the person;

Based on the testimony of the landlord, I find that the landlord personally served the Notice on the tenant. I find that this meets the service requirements set out at Section 88 (a) of the Act.

Sections 46(4) and (5) of the Act state:

#### **Landlord's notice: non-payment of rent**

**46** (1) 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.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[...]

(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.

Section 46(5) of the Act is mandatory, and I do not have discretion as to its application. Based on the landlord's testimony I find the tenant did not file an application to dispute the Notice or pay the rent stated as outstanding on the Notice, within five days of receiving it. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the Notice (November 03, 2019) and must move out of the rental unit. As this has not occurred, I find the landlord is entitled to an order of possession pursuant to section 55 of the Act and the order is effective two days after service.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act. Pursuant to section 26(1) of the Act, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,700.00 on the first day of each month. Based on the testimony of the landlord I find that the tenant did not pay rent in accordance with section 26(1) of the Act and owe the landlord \$6,455.00 in unpaid rent from the months of December 2018, July, August, September, October and December 2019 and January 2020.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. I order the landlord to retain the tenant's security deposit of \$340.00 in partial satisfaction of the unpaid rent.

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, pursuant to section 72 of the Act.

In summary:

Balance of unpaid rent	\$6,455.00
Minus tenant's security deposit	-\$340.00
Allowed monetary claim for unpaid rent	\$6,115.00
Landlord's filing fee	\$100.00
<b>Total monetary award</b>	<b>\$6,215.00</b>

### Conclusion

I grant an order of possession to the landlord effective **two days after service of this order** on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I authorize the landlord to retain the tenant's security deposit of \$340.00 in partial satisfaction of unpaid rent and grant the landlord a monetary order in the amount of \$6,215.00.

The landlord is provided with this order 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 03, 2020

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Residential Tenancy Branch