



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request (the “Application”) that was set as a participatory hearing. The Landlord filed under the Residential Tenancy Act (the “Act”), for a Monetary Order for unpaid rent and recovery of the filing fee, and for an Order of Possession for the rental unit.

The hearing was convened by telephone conference call and was attended by the agents for the Landlord (the “Agents”), both of whom provided affirmed testimony. The Tenant did not attend. The Agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Agents provided affirmed testimony in the hearing that the Notice of Hearing, the Application, and the evidence package were sent to the Tenant at the rental unit on December 30, 2019, by registered mail and provided a copy of the registered mail receipt in the documentary evidence before me. Although the registered mail receipt does not show the mailing address, in the absence of evidence to the contrary, I have accepted the Agents’ affirmed testimony that it was sent to the rental unit address. With consent from the Agents, I logged into the mail provider’s tracking service and tracked the registered mail package. The tracking information shows that a pick-up notice was left on December 31, 2019, and a final notice was left on January 3, 2020, prior to the package being returned to the sender.

Although the package was not picked up by the Tenant, Policy Guideline #12 states that where a document is served by Registered Mail, the refusal of the party to accept or

pick up the Registered Mail, does not override the deeming provision and that when the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing. Based on the undisputed and affirmed testimony of the Agents, the registered mail receipt and the tracking information provided by the mail service provider, I am satisfied that the Notice of Hearing, the Application, and the evidence package were sent to the Tenant at the rental unit on December 30, 2019, by registered mail, that the Tenant deliberately failed to pick it up. As a result of the above, and in accordance with Policy Guideline #12, I therefore find that the Tenant was deemed served on January 5, 2020, five days after the registered mailing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision. At the request of the Agents, a copy of the decision and any Orders issued in favor of the Landlord will be e-mailed to them at the e-mail address provided in the hearing.

#### Preliminary matters

##### **Preliminary Matter #1**

In the hearing the Agents provided affirmed and undisputed testimony that the Tenant continues to occupy the rental unit and that the only rent paid since the 10 Day Notice was issued was \$200.00 on December 16, 2019. As a result, the Agents requested to amend the application to include loss of rent for January and February, 2020, as well as late fees for December, 2019, and both January and February of 2020. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing 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. As a result, I have amended the Application to include outstanding rent for January and February, 2020, as well as late fees for December, 2019, and January and February of 2020.

##### **Preliminary Matter #2**

In reviewing the documentary evidence before me from the Landlord I noted that the name listed for the Landlord on the Application appears to be an abbreviated form of a longer business name. I confirmed the legal name of the Landlord and have noted the correct legal name, as stated by the Agents, in this decision.

### **Preliminary Matter #3**

In reviewing the documentary evidence before me I noted that the Tenants surname is different on the Application than in the remainder of the documentary evidence. As the Tenant was not present during the hearing, I confirmed that the Application contained a minor spelling error and have correctly reflected the Tenant's name in the decision, as provided to me by the Agents and shown in the documentary evidence.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the Landlord entitled to recovery of the filing fee and authorization to withhold the Tenant's security deposit towards any money owed pursuant to section 72 of the *Act*?

#### Background and Evidence

The Landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) in the amount of \$1,185.00, dated December 3, 2019. The 10 Day Notice has an effective vacancy date of December 16, 2019, and indicates that it was served on the Tenant on December 3, 2019, by attaching a copy to the door of the Tenant's rental unit or by placing a copy in the Tenant's mailbox or mail slot.

Although a Proof of Service for the 10 Day Notice was submitted by the Agents, it contained numerous deficiencies, such as a missing Tenant and address information, missing witness signature and date, and missing service information. However, the Agent listed as serving the 10 Day Notice was present in the hearing, J.R., And in the hearing the Agents testified that the 10 Day Notice was attached to the door of the Tenant's rental unit on December 3, 2019, as stated on the 10 Day Notice.

The one year fixed-term tenancy agreement in the documentary evidence before me states that the tenancy, which began on March 1, 2019, has an end date of February 29, 2020, and is set to become a month to month tenancy thereafter, that rent is due on the first day of each month in the amount of \$1,310.00, less a \$125.00

electronic funds transfer credit, that a \$25.00 late fee will be charged each month that rent is late, and that a \$655.00 Security Deposit was paid by the Tenant. The Agents confirmed that these are the correct details of the tenancy and that the Landlord still holds the Tenant's \$655.00 Security Deposit.

The Agents testified that the Tenant has paid \$200.00 towards December 2019 rent on December 16, 2019, and that no further rent has been paid. As a result, the Agents stated that the Tenant owes \$985.00 in rent for December 2019, \$1,185.00 in rent for January, 2020, and \$1,185.00 in rent for February, 2020, as well as \$75 in late fees for December, January, and February. The Agents also stated that they are seeking a two-day Order of Possession for the rental unit as the effective vacancy date of the 10 Day Notice has passed and the Tenant has not paid rent in three months.

### Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

#### **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.

However, section 46(4) and 46(5) of the *Act* also state:

**46** (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.

As there is no evidence before me to the contrary, I accept the Agents' testimony that the 10 Day Notice was posted to the door of the Tenant's rental unit on December 3, 2019. I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was deemed served with the 10 Day Notice on December 6, 2019, three days after it was posted to the door of the rental unit.

I also find that the Tenant was obligated to pay the monthly rent of \$1,185.00 (\$1,310.00, less the \$125.00 electronic funds transfer fee credit), on time and in full each month.

Based on the tenancy agreement, the Agents' affirmed and undisputed oral testimony, and the documentary evidence before me, I find that the Tenant owes \$3,355.00 in outstanding rent for the following periods:

- \$985.00 for December, 2019;
- \$1,185.00 for January, 2020; and
- \$1,185.00 for February, 2020.

As the tenancy agreement in the documentary evidence before me provides for a \$25.00 late fee per month in compliance with Section 7 (1) (d) of the Residential Tenancy Regulation, I also find that the Tenant owes \$75.00 in late fees.

As there is no evidence before me to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, December 16, 2019. As the effective date of the notice has passed, I find that the Landlord is therefore entitled to an Order of Possession effective two days after service on the Tenant.

As the Landlord was successful in their Application, I grant them recovery of the \$100.00 filing. I also grant them authorization to withhold the Tenant's \$655.00 security Deposit in partial payment of the amounts owed pursuant to section 72 of the *Act*.

As a result of the above, I find that the Landlord is entitled to a Monetary Order in the amount of \$2,875.00: \$3,355.00 in outstanding rent, \$75.00 in late fees, and \$100.00 for recovery of the filing fee, less the \$655.00 Security Deposit retained by the Landlord.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,875.00. 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: February 19, 2020

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Residential Tenancy Branch