



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, OPRM-DR

### Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

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

The landlord's application was initially a Direct Request but was convened to a participatory hearing.

The landlord SM attended the hearing via conference call. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions. The tenant did not attend this hearing.

The landlord testified the tenant was served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on February 7, 2020. I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*, and find the tenant was deemed to have received the documents in accordance with section 90 of the *Act*. Canada post tracking number is listed on the first page of this decision.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with the hearing.

In the original Direct Request Application, the landlord was seeking the sum of \$2,100.00 for the months of January and February 2020. In the hearing the landlord sought to increase the monetary claim to include the March 2020 rent for a total claim of \$3,700.00.

### Amendment

The Residential Tenancy Branch rules of procedure rule 4.2 states that amending an application 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, 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.

In this case, the landlord is seeking compensation for unpaid rent that has increased since she first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include the rent for March 2020.

### 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 recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

This tenancy began on May 1, 2016. The landlord submitted a copy of the Tenancy agreement in evidence. The landlord testified that monthly rent in the amount of \$1,600.00 was payable on the first day of each month and a security deposit of \$800.00 was paid by the tenant and continues to be held in Trust.

The landlord provided testimony that the tenant had paid a partial payment of rent for January and \$500.00 remained outstanding. She testified that the tenant also owed the February and March 2020 rent. The tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated February 1, 2020 in person on February 1, 2020. The landlord provided a Proof of Service document signed by the landlord.

The Notice indicates an effective move-out date of February 10, 2020

The grounds to end the tenancy cited in the Notice were:

- 1) the tenant owes the sum of \$500.00 rent that was due January 31, 2020

The landlord testified that she had also served a 10 Day Notice to End Tenancy dated February 02, 2020 citing unpaid rent in the amount of \$1600.00 due on February 1, 2020 remained unpaid. I find this Notice valid and dismiss the 10 Day Notice to End Tenancy dated February 1, 2020.

The tenant did not attend the hearing to present any submissions in relation to the Notice and the tenant did not upload any evidence disputing the landlord's Notice.

### Analysis

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.

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.

Section 46(5) says 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.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with a valid Notice. The tenant did not file an application to dispute the Notice within 5 days of its receipt or pay the rent due. I find that the Notice complies with section 52 of the *Act*. Therefore, the tenant is conclusively presumed pursuant to

section 46(4) of the *Act* to have accepted that the tenancy ended on the effective date of February 11, 2020.

As the tenant has failed to vacate the rental unit, I find that the landlord is entitled to an order of possession, pursuant to sections 46 and 55 of the *Act*.

Pursuant to sections 67 of the *Act*, I order that the tenant pays the landlord \$3,700.00 representing the rent owed from January to March 2020. I am off setting the security deposit of \$800.00 held in Trust against this amount. I order that the tenant pays \$2,900.00

As the landlord has been successful in this application, I grant the landlord a monetary award of \$100.00 for reimbursement of the filing fee pursuant to section 72 of the *Act*.

### Conclusion

I grant a monetary order for the sum of \$3,000.00 for the unpaid rent, including the \$100.00 filing fee pursuant to section 67 and 72 of the *Act*.

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

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: March 13, 2020

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Residential Tenancy Branch