



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR MNSD MNDC FF

### Preliminary Issues

The Agent testified that the Tenant had been served an amended application for Dispute Resolution. However, there was no record that the Landlord amended her application with the RTB and there was no amended application submitted in the Landlord's documentary evidence received on June 9, 2015, July 9, 2015, or July 13, 2015.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 2.11* provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added].

In this case there was no evidence before me that the Landlord filed an amended application with the Residential Tenancy Branch. Accordingly, I declined to hear matters which were not listed on the Landlord's original application that was filed on June 2, 2015.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on June 02, 2015 seeking to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or Utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord's Agent who provided affirmed testimony that the Tenant was served notice of the Landlord's application, notice of hearing documents and evidence by registered mail on June 30, 2015. Canada Post tracking information was provided in the Agent's testimony.

Section 90 of the *Act* provides that a document given or served in accordance with section 89 of the *Act*, if given or served by mail, is deemed to be received on the 5th day after it is mailed.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the above, I find that the Tenant was deemed served notice of this proceeding effective July 5, 2015, in accordance with section 90 of the *Act*. Therefore, I proceeded in absence of the Tenant.

#### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Has the Landlord proven entitlement to a Monetary Order?

#### Background and Evidence

The Landlord and her Agent submitted documentary evidence that the Tenant entered into a fixed term tenancy that began on May 22, 2012 that switched to a month to month tenancy after 12 months. Rent of \$825.00 was payable on the 22<sup>nd</sup> of each month and in May 2012 the Tenant paid \$425.00 as the security deposit.

The Landlord submitted evidence that when the Tenant failed to pay the April 22, 2015 rent in full a 10 Day Notice was posted to the Tenant's door on May 15, 2015. A second 10 Day Notice was personally served upon the Tenant on July 2, 2015, by the Landlord's Agent.

The Agent submitted that the Landlord had been receiving a monthly payment of \$610.00 from Income Assistance which was being applied to the previous month's rent. The last payment received from Income Assistance was on approximately May 27, 2015. The Agent stated that the Tenant made two payments in cash one on June 4, 2015 for \$300.00 and one on June 18, 2015 for \$120.00 which were applied to the

outstanding May 2015 balance and were received for use and occupancy only so the tenancy was not reinstated.

The Agent testified that when the June cash payments were applied to the outstanding May 2015 rent an unpaid balance of \$230.00 remained for May 2015 Rent. The Landlord now seeks an Order of Possession plus a monetary order for use and occupancy for June 2015 and any loss of rent as the July rent is due the day after the hearing on July 22, 2015.

The Agent submitted that they had had difficulty faxing in their evidence and had received error messages which is why their evidence had been submitted three times. Upon review of all the documents received on file it was determined that there was not a copy of the 10 Day Notice issued by the Landlord on May 15, 2015. The Agent had a copy of that 10 Day Notice before her during the hearing and was granted leave to fax a copy into evidence during the hearing.

### Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord's Agent and corroborated by their documentary evidence.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on May 17, 2015, three days after it was posted to his door. Therefore, the effective date of the Notice is **May 27, 2015**.

The Tenant neither paid the rent in full nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **May 27, 2015**. Accordingly, I grant the Landlord's request for an Order of Possession.

The Landlord and Agent claimed unpaid rent of \$230.00 (\$1,260.00 - \$610.00 - \$300.00 - \$120.00) that was due May 22, 2015, in accordance with section 26 of the Act which stipulates a tenant must pay rent and fees in accordance with the tenancy agreement. Based on the aforementioned, I find the Landlord has met the burden of proof and I award them unpaid rent for May 22, 2015 in the amount of **\$230.00**.

As noted above this tenancy ended **May 27, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit from June 22, 2015 to July 21, 2015, not rent. The Tenant remained in possession of the rental unit for that entire month, therefore, I grant the Landlord's request for use and occupancy in the amount of **\$825.00**.

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

### **7. Liability for not complying with this Act or a tenancy agreement**

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Rent is not due until July 22, 2015 and the Landlord has the obligation to try and re-rent the unit for as soon as possible. Therefore, I find it too early to determine the Landlord's claim for loss of rent for the period of July 22, 2015 to August 21, 2015. Accordingly, I dismiss the request for loss of rent, with leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee in accordance with section 72(1) of the Act.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid May 22, 2015 Rent	\$ 230.00
Use & occupancy June 22 to July 21, 2015	825.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$1,105.00</b>
<b>LESS:</b> Security Deposit \$425.00 + Interest 0.00	<u>-425.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 680.00</u></b>

Conclusion

The Landlord has succeeded with their application and has been granted an Order of Possession and a monetary award in the amount of \$1,105.00 which was offset against the Tenant's \$425.00 security deposit.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord has been issued a Monetary Order in the amount of **\$680.00** (\$1,105.00 - \$425.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims 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: July 22, 2015

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Residential Tenancy Branch

