



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR MNR FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities and to recover the cost of the filing fee.

The tenant, a witness for the tenant, and an agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that he did not submit any documentary evidence in response to the landlord's application but did have a copy of the 10 Day Notice dated July 4, 2015 before him during the hearing. The tenant alleged that he did not find the Notice of Dispute Resolution Hearing dated July 28, 2015 until August 14, 2015, however, when he said that he only had 14 days before the hearing to submit evidence, the tenant was corrected that a respondent has until 7 days prior to the hearing to submit evidence pursuant to rule 3.15 of the Rules of Procedure.

I find the tenant was sufficiently served with the Notice of Dispute Resolution Hearing, Application for Dispute Resolution.

### Preliminary and Procedural Matters

At the outset of the hearing, the parties were advised of the conduct expected during the hearing and that interruptions by either party would not be tolerated. During the hearing, the tenant was cautioned on several occasions for continuing to interrupt myself and the landlord during the course of the hearing.

During the hearing, the tenant briefly disconnected from the hearing due to what the tenant described was a problem with his phone that had been going on for some time. Neither witness for the tenant provided witness testimony during the hearing.

During the hearing, the parties agreed that the tenant was renting a fifth wheel on the property of the landlord and as a result, and in accordance with section 64(3) of the *Act*, the landlord's application was amended to include the full rental unit description to ensure clarity.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The parties agreed that a verbal tenancy began on March 1, 2015. The parties disputed the amount of monthly rent. The landlord testified that monthly rent was \$575 and has not been reduced to a lesser amount. The tenant stated that rent has been \$575 and \$500 and changes. The parties did agree that the tenant paid a security deposit of \$175 at the start of the tenancy, which the landlord continues to hold.

The tenant testified that he received the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated July 4, 2015 on July 8, 2015. The tenant confirmed that he did not dispute the 10 Day Notice with the Residential Tenancy Branch but did have an agreement with the landlord regarding not enforcing the 10 Day Notice. The landlord denied that he had any agreement with the tenant not to enforce the 10 Day Notice, and stated that the tenant has failed to pay a portion of rent for May through July and paid no rent for August and September of 2015. The 10 Day Notice indicates that \$1,075 was owed in unpaid rent as of July 1, 2015. The effective vacancy date listed on the 10 Day Notice is July 16, 2015.

The tenant confirmed during the hearing that he did not pay any rent for August and September of 2015 due to the landlord cutting of his power. The tenant confirmed that he has not applied to the Residential Tenancy Branch to seek a remedy for his alleged complaints regarding power. The tenant also stated that he wasn't aware that he had to dispute the 10 Day Notice if he didn't agree with it.

The landlord testified that in addition to the tenant failing to pay any rent for August and September of 2015, the tenant has failed to pay \$225 for May, \$275 for June, and \$175 for July 2015 rent.

The landlord is seeking a monetary order and an order of possession.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** – The tenant confirmed that he did not dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. Page two of the 10 Day Notice clearly sets out the process for disputing the 10 Day Notice. The tenant has provided no evidence that he paid the full amount owing listed on the 10 Day Notice within 5 days of receiving the 10 Day Notice on July 8, 2015. Therefore, I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which automatically corrects under the *Act* to July 18, 2015 as I accept the tenant received the 10 Day Notice on July 8, 2015. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

**Claim for unpaid rent and loss of rent** – I find the tenant has provided insufficient evidence to support that full rent was paid for the months of May through July of 2015 inclusive, and accept the tenant's statement that he has paid no rent for August and September of 2015. Therefore, I prefer and accept the landlord's testimony that the tenant failed to pay rent as claimed.

Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement, whether or not the landlord complies with the *Act*. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I also find that rent is \$575 per month, as I find the tenant's claim that rent was sometimes \$500 and \$575 to be unbelievable.

I find the landlord has met the burden of proof and has established a monetary claim of **\$1,825** comprised of \$225 rent owing for May 2015, \$275 rent owing for June 2015, \$175 rent owing for July 2015, and loss of rent of \$575 for August 2015, and loss of rent of \$575 for September 2015.

As the landlord has succeeded with his application, I grant the landlord the recovery of the filing fee in the amount of **\$50**.

The landlord is holding a security deposit of \$175 which was paid by the tenant at the start of the tenancy and has accrued no interest since that date.

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

Unpaid portion of May 2015 rent	\$225
Unpaid portion of June 2015 rent	\$275
Unpaid portion of July 2015 rent	\$175
Loss of August 2015 rent	\$575
Loss of September 2015 rent	\$575
Filing fee	\$50
<b>Subtotal</b>	<b>\$1,875</b>
<i>(Less tenant's security deposit of \$175)</i>	<i>-(175)</i>

<b>TOTAL AMOUNT OWING BY THE TENANT TO THE LANDLORD</b>	<b>\$1,700</b>
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Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$1,875 as indicated above. I authorize the landlord to retain the tenant's full security deposit of \$175 in partial satisfaction of the landlord's monetary claim and I grant the landlord a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$1,700. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 11, 2015

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Residential Tenancy Branch

