



# 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 was convened as a result of the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on September 13, 2016, and amended by an Amendment to an Application for Dispute Resolution on October 27, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf. The Tenants were represented at the hearing by M.S. Both parties provided their solemn affirmation.

The Landlord testified his Application package, including the Notice of a Dispute Resolution Hearing and 14 pages of documentary evidence, were served on the Tenant, in person, on September 15, 2016. The Tenant testified she did not receive this documentation until sometime in October 2016, but could not be certain of the date. As M.S. could not recall the date the Landlord's Application package was received, and because the date of service corresponds with the date on the Notice of a Dispute Resolution Hearing, I find this documentation was duly served on the Tenants on September 15, 2016.

In addition, the Landlord testified the Amendment, received at the Residential Tenancy Branch on October 27, 2016, was served on the Tenant, in person, on October 24, 2016. A proof of service form was included with the Landlord's documentary evidence. I find that the Amendment was received by the Tenant on October 24, 2016. No further issues were raised with respect to service or receipt of the Landlord's documents.

The parties were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Landlord's original application, received by the Residential Tenancy Branch on September 13, 2016, sought relief with respect to a tenancy at rental unit #303. In his Amendment, the Landlord sought to include losses with respect to a tenancy involving the Tenants at rental unit #5, which was in a building located next door.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permit an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. As the Landlord's original application dealt with the tenancy at unit #303, I find it appropriate to exercise my discretion to dismiss all but the Landlord's application for relief dealing with that rental unit. Accordingly, I dismiss the balance of the relief sought in the Amendment, which deals with losses arising in rental unit #5. The Landlord has leave to reapply for relief with respect to losses arising from the tenancy in rental unit #5.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent?
2. Is the Landlord entitled to an order of possession for unpaid rent?
3. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

The parties agreed the tenancy in unit #303, which is the subject of this hearing, began on August 1, 2016. At that time, the Tenants moved from one rental property owned by the Landlord to another. The Landlord testified the Tenants had given notice to vacate rental unit #5 but were refusing to leave. As the Landlord had re-rented unit #5 to new tenants, the Landlord agreed to let the Tenants stay in rental unit #303. In any event, the Landlord testified rent for unit #303 is \$900.00 per month and is due on the first day of each month. The Tenant M.S. testified that the parties agreed rent would be \$700.00 per month due to the condition of unit #303.

The Landlord confirmed rent was always \$900.00 per month. When the Tenants did not pay rent on September 1, 2016, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 3, 2016 (the "10 Day Notice"). The amount of rent indicated on the 10 Day Notice was \$900.00 per month. According to the Landlord, the 10 Day Notice was served on the Tenant, in person, on September 4, 2016. A copy was included with the Landlord's documentary evidence.

However, the Landlord testified that he agreed the Tenants could pay rent of \$700.00 for the month of September 2016 if they agreed to move out at the end of that month. The Landlord confirmed the Tenants paid \$700.00 on September 16, 2016 – and provided a written receipt with his documentary evidence – but that they did not vacate rental unit at the end of September as agreed. Accordingly, the Landlord submitted the Tenants owe a further \$200.00 for the month of September 2016. In addition, the Landlord testified he has not received rent totalling \$1,800.00 for October and November 2016.

The Tenant M.S. stated rent has been paid in full, but provided no documentary evidence in support. In reply, the Landlord stated the Tenant M.S. is lying and is trying to take advantage of the situation. In any case, the Tenant M.S. suggested she was unable to provide documentary evidence because the Landlord had refused to issue receipts for cash payments. The Tenant M.S. also raised other issues including the condition of the rental unit when the Tenants moved in, "malicious texts" between the parties and access to mail.

### Analysis

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

Section 26 of the *Act* requires tenants to pay rent when it is due under the tenancy agreement, unless there exists a right under the *Act* to deduct all or a portion of it. The Landlord's evidence indicates, and I find, that rent has not been paid in full for the months of September, October and November 2016, and that \$2,000.00 remains outstanding. I find there is insufficient evidence before me to conclude that the Tenants had authority under the *Act* to reduce or refuse to pay rent.

When a tenant does not pay rent when it is due, section 46 of the *Act* permits a landlord to issue a notice to end tenancy. On receipt of a notice to end tenancy, a tenant has five days to either pay rent or file an application for dispute resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the

tenancy. In this case, I find that the Tenants were served with the 10 Day Notice on September 4, 2016. However, they did not pay rent or file an application for dispute resolution in the prescribed period. Accordingly, the Tenants are conclusively presumed to have accepted the end of the tenancy. The tenancy is ended.

In light of the above, I find the Landlord is entitled to an award of \$2,000.00 for outstanding rent for the months of September, October and November 2016.

In addition, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

As the Landlord has been successful, I find he is entitled to recovery of the \$100.00 filing fee.

Accordingly, pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$2,100.00, which is comprised of \$2,000.00 in unpaid rent and \$100.00 as recovery of the filing fee.

### Conclusion

I grant the Landlord a monetary order in the amount of \$2,100.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

In addition, I grant the Landlord an order of possession, which will be effective two (2) days after service upon the Tenants. This order may be filed in 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: November 7, 2016

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Residential Tenancy Branch