



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNR, OLC, ERP, RP, OPR, MNSD, MNR, FF

### Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent, for an Order requiring the Landlord to make repairs, and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement. The Tenant withdrew all of these claims at the hearing, as the rental unit has been vacated.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were served to the Landlord, via registered mail, although she cannot recall the date of service. The Landlord acknowledged receipt of these documents.

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On December 13, 2016 the Landlord submitted 21 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were served to the Tenant, via registered mail, although he cannot recall the date of service. The Tenant stated that she did not receive this evidence nor did she receive notice from Canada Post that this evidence had been delivered.

The parties were advised that the Landlord's evidence would not be accepted as evidence as the Tenant did not acknowledge receipt of the evidence. The Landlord was advised that he would be able to refer to his evidence during the hearing and that if, during the hearing, the Landlord believed it was necessary for me to physically view the evidence the Landlord could request an adjournment. This hearing was concluded without the Landlord requesting an adjournment.

On November 26, 2016 the Tenant submitted 2 pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were served to the Landlord, via registered

mail, on November 25, 2016. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On December 19, 2016 the Tenant submitted 1 page of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were served to the Landlord, via registered mail, on December 19, 2016. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent; and to keep all or part of the security deposit?

### Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on April 15, 2016;
- the Tenant agreed to pay monthly rent of \$2,550.00 by the first day of each month;
- the Tenant paid a security deposit of \$1,250.00;
- the Tenant paid a pet damage deposit of \$1,250.00;
- the Tenant did not pay any rent for November or December of 2016;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of November 30, 2016, was posted on the door of the rental unit on November 19, 2016;
- the Ten Day Notice to End Tenancy declared that the Tenant owed \$2,500.00 in rent that was due on November 01, 2016.

The Tenant stated that she did not have written authority to withhold rent and she made no emergency repairs to the rental unit. She stated that there were multiple deficiencies with the rental unit.

The Tenant did not apply for compensation for deficiencies with the rental unit and those matters cannot, therefore, be considered at these proceedings. The Tenant retains the right to file another Application for Compensation relating to these alleged deficiencies.

The Tenant stated that she vacated the rental unit on January 01, 2017. The Landlord stated that he was unaware the Tenant had vacated the unit.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$2,500.00 by the first day of each month and that the Tenant did not pay rent for November or December of 2016.

Section 26(1) of the *Residential Tenancy Act (Act)* requires tenants to pay rent when it is due even if the landlord does not comply with the Act or the tenancy agreement. As the Tenant

is required to pay rent when it is due, I find that the Tenant owes the Landlord \$5,000.00 in rent for November and December of 2016.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, was posted at the rental unit on November 19, 2016.

As the Tenant did not pay rent when it was due and she was properly served with a Ten Day Notice to End Tenancy for Unpaid Rent, I find that the Landlord has the right to end the tenancy pursuant to section 46 of the *Act*. I therefore grant the landlord an Order of Possession.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. In the event the rental unit has not been vacated, this Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$5,100.00, which includes \$5,000.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit and pet damage deposit of \$2,500.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,600.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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 *Act*.

Dated: January 04, 2017

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Residential Tenancy Branch