



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNR, OPR

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- a monetary order for unpaid rent; and
- an order of possession for unpaid rent.

The landlord's Application was commenced by way of direct request proceeding which is an ex parte proceeding. An interim decision was rendered on March 15, 2017 adjourning the matter to a participatory hearing to clarify some of the details of the landlord's Application.

The landlord's agent (the "landlord") and the tenant appeared at the adjourned participatory teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matters

The landlord indicated that the tenant paid the rent that was due for each of the months of February 2017 and March 2017 in full on March 31, 2017. The landlord indicated that the tenant also paid an amount for "use and occupancy" up to April 15, 2017. The landlord indicated that they were no longer seeking a monetary order for unpaid rent. Therefore, I dismiss the landlord's claim for a monetary order for unpaid rent. The landlord is still seeking an order of possession for unpaid rent.

### Issue to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?

### Background and Evidence

The undisputed evidence established that the tenant entered into a one year fixed term tenancy starting July 1, 2015 and ending June 30, 2016. At the end of the fixed term, the tenancy continued on a month to month basis. Rent in the amount of \$1,080.00 is due on the first day of each month. The tenant paid a security deposit in the amount of \$540.00 on June 16, 2015.

The landlord indicated that the tenant did not pay rent that was due for each of the months of February 2017 and March 2017. The landlord issued a 10 Day Notice dated March 2, 2017 for the unpaid rent, with an effective date of March 12, 2017. The landlord indicated that they posted a copy of the 10 Day Notice on the tenant's door on March 2, 2017. The tenant acknowledged receiving a copy of the 10 Day Notice posted to her door on March 2, 2017.

The landlord testified that the tenant paid the full amount of the unpaid rent in the amount of \$2,160.00 on March 31, 2017. The landlord testified that the tenant also paid an amount for "use and occupancy" of the rental unit up to April 15, 2017.

The tenant acknowledged that the rent that was due for each of the months of February 2017 and March 2017 was paid on March 31, 2017. The tenant acknowledged that she did not make an application to dispute the 10 Day Notice.

The landlord is seeking an order of possession for unpaid rent.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find that the tenant was required to pay rent in the amount of \$1,080.00 for each of the months of February 2017 and March 2017. I find that the tenant did not pay the rent that was due for each of these months until March 31, 2017. Accordingly, I find that the tenant owed the unpaid rent indicated on the 10 Day Notice.

I find that the landlord served the tenant with a copy of the 10 Day Notice in accordance with section 88 of the *Act* on March 2, 2017, by posting a copy on the tenant's door. I find that the tenant was duly served with a copy of the 10 Day Notice on March 2, 2017, the date the tenant acknowledged receiving the copy posted on her door.

I find that the 10 Day Notice complies with section 52 of the *Act* and that it is valid. I find that the 10 Day Notice required the tenant to vacate the rental unit on March 12, 2017.

I find that the tenant failed to pay the rent owed in full within five (5) days granted under section 46(4) of the *Act*. I also find that the tenant did not dispute the 10 Day Notice within that 5 day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, March 12, 2017. Therefore, I find that the landlord is entitled to an order of possession.

### Conclusion

The landlord's application for a monetary order for unpaid rent is dismissed as the landlord did not wish to proceed with this claim.

The landlord's application for an order of possession is successful.

Pursuant to section 55, I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. Should the tenant 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 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: April 18, 2017

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Residential Tenancy Branch