



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR MNR OPB

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, dated March 9, 2017 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order of possession for breach of a fixed term tenancy agreement.

The Landlord attended the hearing on her own behalf and provided affirmed testimony. His niece, S.A., attended to provide assistance with translation where necessary. The Tenant did not attend the hearing.

According to the Landlord, the Application package, including the Notice of a Dispute Resolution Hearing and the documentary evidence, was served on the Tenant in person on March 11, 2017. In the absence of evidence to the contrary, I find the Landlord's Application package was duly served on and received by the Tenant on that date.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to 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.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order of possession based on the end of a fixed term tenancy agreement?

### Background and Evidence

The Landlord provided with his documentary evidence a copy of the tenancy agreement between the parties. It confirms a month-to-month tenancy began on September 1, 2016. Rent in the amount of \$800.00 is due on the first day of each month. The Landlord holds a security deposit in the amount of \$400.00.

According to the Landlord, the Tenant did not pay rent when due on February 1, 2017. Accordingly, he issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 5, 2017 (the "10 Day Notice"). The 10 Day Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit on the same date. A copy of the 10 Day Notice was submitted with the Landlord's documentary evidence. The Landlord further testified the Tenant has not paid rent for March and April 2017, and that \$2,400.00 currently remains outstanding.

The Landlord also sought recovery of the \$100.00 filing fee paid to make the Application, and requested that I apply the security deposit to any monetary award I grant.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, the Landlord testified, and I find, that the Tenant did not pay rent when due on February 1, 2017. Accordingly, the Landlord issued the 10 Day Notice, which was served on the Tenant by attaching a copy to the door of the Tenant's rental unit on February 5, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be

received three days later. I find the 10 Day Notice is deemed to have been received by the Tenant on February 8, 2017. Accordingly, the Tenant had until February 13, 2017, to pay rent in full or file an application for dispute resolution. As the Tenant did neither of these things, I find the Tenant is deemed to have accepted the end of the tenancy. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant. As the tenancy has ended on the basis of unpaid rent, it is not necessary for me to consider the Landlord's request for an order of possession based on the end of a fixed term tenancy.

In addition, I am satisfied the Landlord has established a claim for outstanding rent in the amount of \$2,400.00. The Tenant did not attend the hearing to dispute the amount claimed by the Landlord. I find the Landlord is entitled to a monetary award for outstanding rent in this amount. Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make this Application.

The Landlord asked he be permitted to retain the security deposit held in partial satisfaction of his monetary claim, which I allow. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,100.00, which is comprised of \$2,400.00 in unpaid rent and \$100.00 as recovery of the filing fee, less the security deposit of \$400.00.

### Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted 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).

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: April 11, 2017

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Residential Tenancy Branch