



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, OPR

This hearing dealt with an Application for Dispute Resolution by Direct Request (the “Application”) that was adjourned to a participatory hearing. The Landlord filed under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenant did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Landlord testified in the hearing that the Application for Dispute Resolution by Direct Request, the Notice of Direct Request, were personally served on the Tenant on August 25, 2017. As a result, I find the Tenant was personally served on August 25, 2017.

The Landlord also testified that the Notice of Hearing was sent to the Tenant by registered mail on August 31, 2017, and provided the registered mail receipt. As a result, I find that the Tenant was deemed served on September 5, 2017, five days after the Notice of Hearing was sent by registered mail.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

### Preliminary matters

At the outset of the hearing I advised the Applicant that the Landlord identified on the Application and the Landlord identified on the tenancy agreement are not the same. The Applicant testified that the Landlord listed on the tenancy agreement is the correct Landlord, and that they are an Agent for the Landlord. The Applicant stated that they are also the person who signed the tenancy agreement on the Landlord's behalf. Based on the above and in the absence of evidence to the contrary, I find that the Applicant is the Agent for the Landlord and as such, will be referred to as the "Agent" throughout my decision and I amend the landlord's Application to include the name of the landlord as identified on the tenancy agreement.

In the hearing the Landlord testified that the Tenant continues to occupy the rental unit and that no further rent has been paid. The Landlord requested to amend the application to include loss of rent for September, 2017, and October, 2017. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. As a result, I have amended the Application to include outstanding rent for September, 2017, and October, 2017.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The Landlord testified that the two year fixed-term tenancy began July 1, 2016, and has an end date of June 30, 2018. The Landlord testified that rent in the amount of \$1000.00 is due on the first day of each month and that a security deposit in the amount of \$400.00 was due at the beginning of the tenancy but never paid by the Tenant. The Landlord also submitted a copy of the tenancy agreement matching the above terms.

The Landlord testified that the tenant had not been paying the rent on-time and in full for several months, and as a result, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was issued.

The Landlord submitted a copy of a 10 Day Notice, dated August 7, 2017, indicating that as of August 1, 2017, the Tenant owed \$6,185.00 in unpaid rent, and \$475.00 in unpaid utilities. The 10 Day Notice indicated that a demand letter was issued regarding the utilities on June 15, 2017, and that the effective date of the 10 Day Notice was August 17, 2017. The 10 Day Notice also indicated that it was served on the Tenant on August 7, 2017, by leaving a copy with an adult who resides with the Tenant. A witnessed and signed Proof of Service Notice to End Tenancy was submitted by the Landlord which includes a signature from someone confirming receipt of the Notice and that they are an adult who resides with the Tenant.

The Landlord testified that the Tenant has not paid any rent since June 5, 2017, and currently owes \$7,630.00 in rent up to and including October, 2017. The landlord submitted a ledger indicating that as of August 1, 2017, the Tenant owed \$5,630.00 for rent and \$400.00 for the outstanding security deposit. I advised the Landlord that the 10 Day Notice dated August 7, 2017, indicates that the Tenant owed \$6,185.00 in rent as of that date, and inquired about the discrepancy. The Landlord was unable to provide any evidence regarding the additional amount noted on the 10 Day Notice and stated that the \$5,630.00 indicated in the ledger is the correct amount owed for rent as of August 1, 2017. In addition to the amounts shown in the ledger, the Landlord testified that the Tenant owes \$1000.00 in rent for September 2017, and \$1000.00 for October, 2017.

In the hearing the Landlord was unsure if a demand letter had been issued regarding the utilities and one was not submitted with the documentary evidence. However, the Landlord pointed me to the tenancy agreement which indicates that utilities are not included and stated that at the start of the tenancy, the Tenant agreed to transfer the hydro and water/garbage/sewer bills into their name and pay the bills accordingly. The Landlord testified that the Tenant never transferred the water/garbage/sewer bill into their name, and therefore owes the Landlord \$480.84 for their water usage. The Landlord testified that they advised the Tenant of the outstanding utility amounts on numerous occasions over the phone, by text and via e-mail, however, the Tenant never paid them.

The Landlord submitted copies of three water bills as follows:

- \$238.92 for the period of May 1, 2016 – August 31, 2016;

- \$175.45 for the period of September 1, 2016 – December 31, 2016; and
- \$190.61 for the period of January 1, 2017 – April 30, 2017.

The Landlord testified that the Tenant was only responsible for \$114.78 of the bill for \$238.92 as one of the charges was for the replacement of a garbage cart, which the landlord paid, and the remainder of the bill was pro-rated for the period during which the Tenant occupied the property. The Landlord also submitted a ledger matching the above amounts. I advised the Landlord that the 10 Day Notice dated August 7, 2017, indicates that the Tenant owed \$475.00 in utilities, and inquired about the discrepancy. The Landlord was unable to provide any evidence regarding the discrepancy and stated that the ledger and the bills are the correct accounting of what is owed for utilities. However, the Landlord stated that they are willing to concede that the tenant owes \$475.00 in utilities as that is the amount that was listed on the 10 day Notice.

### Analysis

Section 46 (1) of the *Act* states the following with regards to the non-payment of rent and utilities:

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was deemed served with the 10 Day Notice on August 17, 2017, the day it was personally served on an adult who resides with the Tenant. I also find that the Tenant was obligated to pay the monthly rent of \$1,000.00, on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five 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, August 17, 2017.

Based on the above, I find that the Tenant owes \$7,630.00 in outstanding rent. Although I do not find that the \$475.00 listed on the 10 Day Notice constitutes outstanding rent in accordance with section 46(6)(b) of the *Act*, I still find that the Tenant was responsible to pay these costs under the tenancy agreement. As a result, I find that the Tenant owes \$475.00 in outstanding utilities to the Landlord for water/sewer/garbage.

Therefore, I find that the Landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$8,105.00, the amount owing as of today's date for unpaid rent and utilities.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$8,105.00. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: October 3, 2017

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Residential Tenancy Branch