



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR

### Introduction

This participatory hearing was convened after the issuance of a September 28, 2017, interim decision by an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord. Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. The Adjudicator reconvened the landlord's application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*, and
- a monetary order for unpaid rent pursuant to section 67 of the *Act*.

The tenant did not attend this hearing, although I waited until 9:43 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord gave undisputed affirmed testimony that a copy of the notice of this adjourned hearing was personally served to the tenant on October 04, 2017. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the notice of this adjourned hearing.

The landlord provided a signed and witnessed Proof of Service Document attesting to the fact that the Landlord's Application for Dispute Resolution (the Application), along with all supporting evidence, was personally served to the tenant on September 20, 2017, as a part of the direct request proceeding package. In accordance with sections 88 and 89 of the Act, I find the tenant was duly served with the Application and supporting evidence.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was personally served to the tenant at 7:10 p.m. on August 30, 2017. In accordance with section 88 of the Act, I find the 10 Day Notice, identifying \$400.00 in unpaid rent and \$1,708.72 in unpaid utilities owing for this tenancy, was duly served to the tenant.

At the outset of the hearing the landlord testified that the tenant is still in the rental unit and has paid the amounts shown as owing on the 10 Day Notice in full on September 22, 2017. The landlord requested to withdraw their application for a monetary award.

The landlord's application for a monetary award is withdrawn.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

#### Background and Evidence

The landlord gave written evidence that this tenancy began on September 01, 2016, with a monthly rent of \$300.00 which is due on the first day of each month. The landlord testified they retain a security deposit in the amount of \$150.00.

A copy of the signed 10 Day Notice, dated August 30, 2017, with an effective date of September 10, 2017, was included in the landlord's evidence. The 10 Day Notice indicated the tenant had five days to either pay the outstanding rent or file an Application for Dispute Resolution seeking to cancel the Notice.

A copy of a receipt issued by the landlord to the tenant dated September 23, 2017, which indicates the tenant's "payment of funds is for the use and occupancy only..."

The landlord testified that they accepted this money from the tenant for use and occupancy only and that they are still seeking an Order of Possession for the rental unit.

### Analysis

Based on the landlord's undisputed evidence and affirmed testimony, I find the tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within the same timeframe. In accordance with section 46(5) of the *Act*, due to the failure of the tenant to take either of these actions within five days, I find the tenant is conclusively presumed to have accepted the end of this tenancy by September 10, 2017, the effective date on the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by September 10, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) or any occupant on the premises 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 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 16, 2017

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Residential Tenancy Branch