



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order of Possession and for a Monetary Order for unpaid rent and utilities.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about the hearing process. During the hearing, the Landlord was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with the Notice of Hearing documents in person on October 8, 2019. I find that the Tenant was served with the Notice of Hearing documents in accordance with the Act.

### Preliminary and Procedural Matters

The Landlord provided his email addresses at the outset of the hearing and confirmed

his understanding that the Decision would be emailed to him and mailed to the Tenant and that any Orders would be sent to the appropriate Party in this manner.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

### Background and Evidence

The Landlord confirmed the evidence in the tenancy agreement he submitted, which states that the periodic tenancy began on February 1, 2017, with a monthly rent of \$1,800.00, due on the first day of each month. The Landlord said the Tenant paid a security deposit of \$900.00, and no pet damage deposit.

The Landlord said that the Tenant did not pay any rent in August 2019, therefore, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated August 21, 2019 ("10 Day Notice"). The 10 Day Notice is signed, dated, has the rental unit address, was served in person on August 21, 2019, with an effective vacancy date of August 31, 2019, and the grounds for the eviction.

The Landlord said that as of the date of the hearing, the Tenant remained in the rental unit. The Landlord said that the Tenant made the following payments further to receiving the 10 Day Notice:

- September 3, 2019 → \$1,775.00 for August, short \$25.00;
- November 8, 2019 → \$1,500.00 for September, short \$300.00

The Landlord also said that the tenancy agreement sets out that the Tenant is responsible for two-thirds of the residential property's utilities bill; however, the Landlord said that the Tenant has never paid the Landlord anything for utilities.

The Landlord submitted a copy of a demand letter he wrote dated August 21, 2019, in which the Landlord advised the Tenant that he owes \$1,490.00 in utilities, and that this must be paid within 30 days of the date of the demand letter. The Landlord said that the Tenant has not paid anything toward this debt.

The Landlord said that the Tenant still owes him \$1,800.00 for each of October and November 2019, in addition to the amounts outstanding for August and September 2019, noted above.

The Landlord said that these amounts total \$3,925.00 for unpaid rent and \$1,490.00 for a total of \$5,415.00. The Landlord said that he advised the Tenant that the Landlord paid the latest utilities bill of \$818.40 and that the Tenant owes him for this, as well. However, the Landlord said that he had not given the Tenant any further written demands for utilities owing since that of August 21, 2019.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord. Based on the evidence before me overall, and pursuant to section 26 of the Act, I award the Landlord a Monetary Order of \$5,415.00 of the unpaid rent. This amount includes the unpaid utilities owing as of August 21, 2019, as set out in the Landlord's demand letter. This is pursuant to section 46(6), which states:

**46 (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.

The amount the Landlord claimed on his Application only reflects the amount owing to the Landlord in rent at the time of the 10 Day Notice. However, the Tenant has continued to live in the rental unit and the amount owing is now as set out above. The Landlord requested that his Application for a Monetary Order be increased to this amount to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64(3)(c ) of the Act, I amend the Application for dispute resolution to correct the amount of the Monetary Order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord's original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$925.00 to \$5,415.00.

Therefore, pursuant to section 67 of the Act, I award the Landlord with \$5,415.00.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$900.00 in partial satisfaction of the Landlord's monetary claim. I authorize the Landlord to retain the \$900.00 security deposit, and I award the Landlord a Monetary Order of **\$4,015.00**.

Further, I find that the Tenant has remained in the rental unit beyond the effective vacancy date of the 10 Day Notice. Therefore, 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.

### Conclusion

The Landlord is successful in his Application for a Monetary Order and an Order of Possession. The Tenant has failed to pay \$5,415.00 in rent and utilities owing under the tenancy agreement, and has remained in the rental unit up to the date of the hearing, despite having been served with a 10 Day Notice on August 21, 2019.

I authorize the Landlord to retain the Tenant's \$900.00 security deposit in partial satisfaction of the debt owing the Landlord by the Tenant, and I award the Landlord a Monetary Order for **\$4,015.00** for the remaining amount owing. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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.

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: November 25, 2019

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Residential Tenancy Branch