



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter MEICOR PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      TT: CNR MNDCT MT OT PSF  
                             LL: MNRL-S OPR-DR

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant made an Application for Dispute Resolution which was submitted on September 12, 2019 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 3, 2019 (the “10 Day Notice”);
- more time to extend the time limit established by the *Act*, to make an Application for dispute resolution to obtain an order cancelling the 10 Day Notice;
- a monetary order for damage or compensation; and
- an order that the Landlord provide a service;

The Landlord’s Application for Dispute Resolution was made on September 12, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent;
- and order to retain the security deposit; and
- an order granting recovery of the filing fee.

### Preliminary Matters

The parties had a dispute resolution hearing which took place on November 28, 2019. The Landlord's Agents attended the hearing; however, no one appeared for the Tenant. In the decision dated November 28, 2019, the Arbitrator awarded an order of possession, as well as a monetary order for unpaid rent to the Landlord. The Tenant applied for a review consideration on December 2, 2019 and was granted a new hearing based on the fact that he was unable to attend the original hearing.

The hearing was scheduled for 11:00 A.M. on February 4, 2020 as a teleconference hearing. The Landlord's Agents appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 35 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agents and I were the only persons who had called into this teleconference.

The Landlord's Agents stated that the Tenant never served the Landlord with a copy of the Review Consideration Decision containing the date and time of the review hearing. The Landlord's Agents stated that they only learned about the review hearing after contacting the Residential Tenancy Branch.

The Landlord's Agents stated that after learning about the review hearing, they served the Tenant with a copy of their documentary evidence and amendment to their Application by registered mail on January 20, 2020. Based on the oral and written submissions of the Landlord's Agents, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Landlord's documentary evidence on January 25, 2020.

The Landlord amended their Application on January 20, 2020 to increase the amount of unpaid rent currently owing to the Landlord as well as to include the cost of legal fees. I find it is reasonable to expect that the amount of unpaid rent could increase between the date of the original hearing and the review hearing, as such the Landlord's Application has been amended to include unpaid rent for the months following the original hearing. In relation to the Landlord's claim for the recovery of legal fees in the amount of \$2,725.07, I find that these costs are not recoverable by the Landlord. As such, I dismiss the Landlord's claim for legal fees without leave to reapply.

Rule 7.3 of the Rules of Procedure states that if a party fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As no one attended the review hearing for the Tenant, I therefore dismiss the Tenant's Application in its entirety without leave to reapply.

The Landlord's Agents were given an 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.

#### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice dated September 3, 2019, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order to retain the security deposit, pursuant to Section 38 and 72 of the *Act*?
4. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The Landlord's Agents testified that the tenancy began on August 1, 2019. Rent in the amount of \$1,250.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$600.00, which the Landlord continues to hold. The Landlord's Agents stated that the Tenant continues to occupy the rental unit.

The Landlord's Agents testified the Tenant did not pay rent in the amount of \$50.00 for August 2019 and \$1,250.00 when due on September 1, 2019. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 3, 2019 (the "10 Day Notice") with an effective vacancy date of September 16, 2019. The Landlord's Agents stated that the 10 Day Notice was served to the Tenant by posting it to the Tenant's door on September 3, 2019.

The Landlord's Agents testified that since serving the 10 Day Notice, the Tenant has made no payments towards the unpaid rent as indicated on the 10 Day Notice. The Landlord's Agents stated that the Tenant has also failed to pay rent to the Landlord when due for October 2019, November 2019, December 2019, January 2020, and February 2020. The Landlord's Agents stated that currently the Tenant owes the Landlord \$7,550.00 for unpaid rent. The Landlord is also seeking an order of possession based on the unpaid rent.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

### Analysis

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

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the Act states 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.

I find based on the Landlord's Agents' uncontested testimony that the Landlord served the 10 Day Notice dated September 3, 2019 with an effective vacancy date of September 16, 2019, to the Tenant by posting it to the Tenant's door on September 3, 2019. 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 Tenant is deemed to have received the 10 Day Notice on September 6, 2019.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant

had until September 11, 2019 to either pay the outstanding rent owed to the Landlord in full or make an Application for dispute resolution.

I accept the Landlord's Agents' undisputed testimony that after service of the 10 Day Notice, the Tenant failed to pay the remaining balance of rent owing in the amount of \$1,300.00 and has also failed to pay rent when due for October 2019, November 2019, December 2019, January 2020, and February 2020. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and their Application to cancel the 10 Day Notice was dismissed, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, September 16 2019, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. I find that the order of possession granted by the Arbitrator in the decision dated November 28, 2019 is confirmed and may be enforced.

In light of the above, I find that it is reasonable to vary the previous monetary order issued by the Arbitrator in the original hearing to also include the unpaid rent for December 2019, January 2020, and February 2020 for an additional amount of \$3,750.00.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$7,050.00, which has been calculated as follows:

| <b>Claim</b>                              | <b>Amount</b>     |
|---|-------------------|
| Monetary Order dated November 28, 2019:   | \$3,300.00        |
| Varied to include additional unpaid rent: | \$3,750.00        |
| <b>TOTAL:</b>                             | <b>\$7,050.00</b> |

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The order of possession granted by the Arbitrator in the original decision is confirmed and may be enforced.

The Landlord is granted a varied monetary order in the amount of \$7,050.00. The monetary order should be served to the Tenant as soon as possible and 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: February 04, 2020

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Residential Tenancy Branch