



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and for cause pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on December 8, 2015. The landlord has verbally provided a Canada Post Customer Receipt Tracking number as confirmation and stated that the package was returned by Canada Post as unclaimed after leaving notice(s) for the tenant to claim the package. I accept the undisputed affirmed testimony of the landlord and find that the tenant was properly served as per section 88 and 89 of the Act. Although the tenant failed to claim the notice of hearing package, he is deemed served with it as per section 90 of the Act, 5 days later on December 14, 2015 (5<sup>th</sup> day is Sunday).

During the hearing the landlord withdrew portions of the monetary claim regarding utilities. As such no further action is required. The landlord also clarified that he was withdrawing his request for an order of possession as a result of unpaid rent and will only be proceeding on the request for an order of possession as a result of a 1 Month Notice to End Tenancy issued for Cause. As such no further action is required for this portion of the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The landlord stated that there was no signed tenancy agreement and that everything regarding the tenancy was made verbally. The landlord stated that the tenancy began on September 1, 2014 on a month-to-month basis. The monthly rent was \$850.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$425.00 was paid on September 7, 2014. The landlord also stated that there was an agreement for the tenant to pay 40% of the monthly utilities.

The landlord stated that the tenant is repeatedly late paying rent and has issued 3 10 Day Notice(s) for Unpaid Rent, all dated November 21, 2015. Each notice states that the tenant failed to pay rent of \$145.00 for September 1, 2015, \$850.00 for October 1, 2015 and \$850.00 for November 1, 2015. The landlord stated that repeated verbal warnings were given to the tenant that late rent was not acceptable.

The landlord stated that the tenant was served with a 1 Month Notice to End Tenancy for Cause (1 Month Notice) dated November 21, 2015 displaying an effective end of tenancy date of December 21, 2015 and one reason for cause.

*Tenant is repeatedly late paying rent.*

The landlord stated that the tenant was served with the 1 Month Notice dated November 21, 2015 on November 21, 2015 by wedging it to the tenant's door.

Subsequently, the landlord stated the tenant failed to pay all of the rent owed for December leaving a balance of \$359.00. The landlord stated that no further rent payments have been made by the tenant since the 1 Month Notice was served on November 21, 2015.

The landlord seeks an order of possession and a monetary order for \$1,209.00 which consists of:

\$359.00	December 2015 Unpaid Rent
\$850.00	January 2015 Unpaid Rent
\$1,209.00	Total

### Analysis

Section 47(1)(b) of the Residential Tenancy Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

Residential Tenancy Branch Policy Guideline #38, Repeatedly late payment of rent state:

The *Residential Tenancy Act*<sup>1</sup> and the *Manufactured Home Park Tenancy Act*<sup>2</sup> both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

The landlord has provided undisputed affirmed testimony that the tenant was served a 1 Month Notice dated November 21, 2015 for repeatedly late payment of rent for September 2015, October 2015 and November 2015. On this basis, I find that the tenant was served with the 1 Month Notice dated November 21, 2015. The tenant has not disputed the 1 Month Notice as of the date of this hearing and is conclusively presumed to have accepted that the tenancy was at an end. The landlord's application for an order of possession is granted.

As for the landlord's monetary claim, section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant failed to pay rent.

I accept the undisputed affirmed testimony of the landlord and find that a claim for unpaid rent has been established. The landlord has established a claim of \$359.00 for unpaid rent for December and \$850.00 for January.

The landlord having been successful is entitled to recovery of the \$50.00 filing fee.

### 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) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord an award, plus the recovery of his filing fee.

<b>Item</b>	<b>Amount</b>
Unpaid Rent (December \$359.00 and January \$850.00)	\$1,209.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,259.00</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order. 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: January 29, 2016

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Residential Tenancy Branch

