



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR OPR MNR MNDC FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for an Order of Possession for unpaid rent pursuant to section 55; a monetary order for unpaid rent and late fees pursuant to section 67; and to recover the filing fee from the landlord for the cost of this application pursuant to section 72. The tenant applied to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") and to recover his filing fee for this application.

The tenant did not attend. The landlord attended and was given full opportunity to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was personally served to the tenant on January 12, 2016. The landlord testified that he served the tenant with the Application for Dispute Resolution hearing package by registered mail on January 26, 2016. The landlord provided a copy of his registered mail receipt with Canada Post tracking number. I accept that the tenant was duly served with the 10 Day Notice on January 12, 2016 and deemed served with the landlord's Application for Dispute Resolution hearing package on January 31, 2016 (5 days after its mailing).

With respect to the tenant's application to cancel the landlord's 10 Day Notice and his failure to attend this hearing, Rule 10.1 of the Rules of Procedure provides as follows:

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing to support his application, I **order the tenant's entire application dismissed without liberty to reapply.**

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee from the landlord?

Background and Evidence

The landlord testified that the residential tenancy agreement began on August 1, 2015. The rental amount for this unit was established at \$900.00. The landlord submitted a copy of the residential tenancy agreement for evidence at this hearing. The landlord testified that he continues to hold the \$450.00 security deposit paid by the tenant on July 30, 2015.

The landlord testified that the tenant did not pay rent of \$900.00 due on January 1, 2016. The landlord testified that the tenant asked for additional time (10 days) to pay rent but that the tenant still has not paid the outstanding \$900.00 rent for January 2016. The landlord testified that, prior to January 2016, the tenant's rent payments were often late and that the landlord had repeatedly asked the tenant to provide post-dated cheques. On January 12, 2016, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the January 2016 rent after receiving the 10 Day Notice. The landlord also testified that the tenant has not paid any rent for the month of February 2016.

The landlord has applied for an Order of Possession as well as a monetary order for two months' rent totalling \$1800.00. The landlord submitted that, as the tenant has not vacated the rental unit as of this hearing (the last day of February), he should also be entitled to a portion of rent for the month of March 2016.

Analysis

Section 26(1) of the *Act* establishes that "a 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." The tenant had established no right to withhold rent. I accept the landlord's evidence that the tenant continues to reside in the rental unit.

I accept the landlord's evidence that the tenant failed to pay the January 2016 rent within five days of receiving the 10 Day Notice to End Tenancy. I accept that the tenant

has not paid rent for February 2016 and that he has made no attempts to make payment towards the rental arrears.

Section 55(1) of the *Act* reads as follows:

- 55     (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The tenant made an application to dispute the landlord's notice to end tenancy. The tenant did not attend to support his application to cancel the Notice to End Tenancy. The landlord's notice to end tenancy conforms with the requirements of the *Act*; the landlord has provided undisputed sworn testimony regarding the service of documents; and the landlord has provided sufficient evidence to justify the notice to end tenancy. In the circumstances and in accordance with section 55 of the *Act*, I find that the landlord is entitled to a 2 day Order of Possession.

I accept the landlord's evidence that the January and February 2016 rent remains unpaid by the tenant. Therefore, I find that the landlord is entitled to a monetary order including \$1800.00 in unpaid rent. Given the date of the hearing and decision in this matter, as well as the landlord's submissions regarding ability to re-rent, the landlord is entitled to a portion (\$450.00 or half months' rent) of March 2016 rent as a rental loss that he will incur.

The landlord testified that he continues to hold a security deposit of \$450.00 plus any interest from August 1, 2015 to the date of this decision. In accordance with section 72(2) of the *Act*, I will allow the landlord to retain the security deposit *plus any interest* in partial satisfaction of the monetary award. There is no interest payable for this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for January 2016	\$900.00
Rental Arrears for February 2016	900.00
Loss of Rent for March 2016	450.00
Less Security Deposit	-450.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$1850.00</b>

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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: March 1, 2016

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Residential Tenancy Branch

