



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, 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 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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and provided undisputed affirmed testimony. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Express Post on February 10, 2016. The tenant's agent, R.D. (the tenant) confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence. The tenant did not submit any documentary evidence. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act. The tenant is deemed to have been served as per section 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession or unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and for recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

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

This tenancy began on November 1, 2010 on a fixed term tenancy ending on October 31, 2010 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The landlord clarified during the hearing that that the end of the fixed term was a clerical error and should have been for the year, 2011. The monthly rent is \$1,150.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$600.00 and a pet damage deposit of \$200.00 were paid on October 8, 2010.

The landlord stated that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 7, 2015 in person on November 7, 2015. The 10 Day Notice stated that the tenant failed to pay rent of \$3,450.00 that was due on November 1, 2015. The 10 Day Notice also displays an effective end of tenancy date of November 17, 2015.

The landlord seeks an order of possession and a monetary order for \$6,900.00 for unpaid rent from September 2015 to February 2016 (6 months). The landlord stated that as of the date of this hearing no rent has been paid.

The tenant's agent, R.D. stated, "that's totally correct, I agree". It was clarified with the tenant's agent that he was not disputing any portion of the landlord's claims. The tenant's agent agreed that no rent has been paid since September 2015.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to

vacate the premises by November 7, 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided affirmed and uncontested testimony that the tenant has unpaid rental arrears totaling \$6,900.00 and that no rent has been paid since September 2015. The tenant's agent has agreed to and not disputed any portion of the landlord's claims. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

I also find that as the tenant still has possession of the rental unit as of the date of this hearing that the landlord is also entitled to the unpaid rent for March 2016 of \$1,150.00.

The landlord testified that he continued to hold the tenant's \$600.00 security deposit, plus interest, paid on October 8, 2010. Over that period, no interest is payable. The landlord also holds a pet damage deposit of \$200.00, plus interest, paid on October 8, 2010. Over that period, no interest is payable.

The landlord applied to keep the tenant's security and pet damage deposits. I allow the landlord to retain the combined deposits in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$7,350.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid September 2015 Rent	\$1,150.00
Unpaid October 2015 Rent	1,150.00
Unpaid November 2015 Rent	1,150.00
Unpaid December 2015 Rent	1,150.00
Unpaid January 2016 Rent	1,150.00
Unpaid February 2016 Rent	1,150.00
Unpaid March 2016 Rent	1,150.00
Offset Security and Pet Deposits	-800.00
Recover Filing Fee	100.00

<b>Total Monetary Order</b>	<b>\$7,350.00</b>
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The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord is provided with a formal copy of an order of possession. 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.

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 23, 2016

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Residential Tenancy Branch

