



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPL, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy started on November 1, 2010. Rent of \$1,370.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$685.00 as a security deposit and \$685.00 as a pet deposit. The tenancy agreement provides that the Tenant pays 2/3 of the utilities. The Landlord increased the Tenant's rent on two occasions by emailing the Tenant with the notice of rent increase. The Landlord did not use the approved form to set out the increase. The Landlord increased the rent by the amount allowed under the Act however the Landlord does not know when the actual

increases took effect other than one increase occurring in 2013 and another increase in 2014.

On March 27, 2016 the Landlord served the Tenants with a 2 month notice to end tenancy for landlord's use by posting the notice on the door. On April 7, 2016 the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent by posting this notice on the door. The Tenant did not dispute either notice. The Landlord has not given the Tenant the equivalent of one month's rent in compensation for the notice to end tenancy for landlord's use.

The Tenant failed to pay rent for April 2016 on the first day of the month. The Tenant paid \$450.00 on April 13, 2016 and \$1,050.00 on April 28, 2016. The Landlord claims unpaid rent of \$400.00. The Landlord also claims unpaid rent for May 2016. The Landlord claims unpaid utilities.

#### Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the undisputed evidence of the Landlord I find that the Tenant did not dispute the Notice to end tenancy and that the Landlord is therefore entitled to an order of possession.

Section 41 of the Act provides that a landlord may not increase the rent except in accordance with part 3 of the Act (sections 40 to 43 inclusive) that sets out allowable increases. Section 42(3) of the Act provides that a notice of rent increase must be in the approved form. Section 43 of the Act provides that if a landlord collects a rent increase that does not comply with part 3 of the Act, the tenant may deduct the increase from rent or otherwise recover the increase. By not giving the Tenant a notice of rent increase in the approved form I find that the Landlord collected an increased rental amount that does not comply with the Act. However, I am unable to determine the exact amount given the lack of evidence from the Landlord.

As the tenancy is ending the Tenant is not able to make any rental deductions to collect the increased amounts. While a return of rental monies to the Tenant was contemplated as a possibility at the hearing, upon further consideration, as the Landlord did not provide sufficient evidence to allow certainty in calculations I decline to calculate any repayment to the Tenant. Further the Landlord did not pay the Tenant the equivalent of a month's rent as compensation for the notice to end tenancy for landlord's use. As some payment is owed to the Tenant I am unable to determine any amount of rent or utilities owed, if any, to the Landlord.

For these reasons I dismiss the Landlord's remaining monetary claims with leave to reapply. I also dismiss the Landlord's claim for recovery of the filing fee without leave to reapply. The Tenant is at liberty to make an application for the return of any rental monies collected contrary to the provisions of the Act.

#### Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: May 25, 2016

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Residential Tenancy Branch