



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR, MNR, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession, monetary order and an order to recover the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Is the landlord entitled to the recovery of the filing fee?

### Background and Evidence

The landlord gave the following testimony. The tenancy began on or about July 1, 2014. Rent in the amount of \$1100.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$600.00. The tenant failed to pay rent in the month(s) of May and on May 18, 2016 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of June. The landlord stated that he seeks an order of possession and a monetary order.

The tenant gave the following testimony. The tenant stated that he acknowledges that he did not pay the rent for May and June. However, the tenant stated that he felt justified in withholding the rent as there was a plumbing issue in the home that reduced the value of this tenancy. The tenant stated that he attempted to settle the matter with the landlord but to no avail.

### Analysis

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 arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

I accept the landlord's testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Although the tenant felt justified in withholding rent, he did not have an order from the Branch order that he could or the agreement of the landlord. Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the 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.

As for the monetary order, I find that the landlord has established a claim for \$2200.00 in unpaid rent. The landlord is also entitled to recovery of the \$100.00 filing fee. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's \$600.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1700.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$1700.00. The landlord may retain the security deposit.

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: June 29, 2016

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Residential Tenancy Branch