



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      OPR MNR 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 and utilities pursuant to section 55;
- a monetary order for unpaid rent 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m.

The landlord's agent testified that on June 14, 2016, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord's agent provided a registered mail tracking number in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

### Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord's agent testified that the tenant had not yet vacated the rental unit and therefore asked to amend the claim to include outstanding rent in the

amount of \$789.25 that was payable on July 1, 2016. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

### Issues

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

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenancy began on February 1, 2013 with a current monthly rent of \$789.25 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$380.00 at the start of the tenancy which the landlord continues to hold.

The landlord's claim is for outstanding rent in the amount of \$2367.75. The landlord testified that this includes unpaid rent for the period of May 2016 to July 2016.

The landlord's witness T.D. testified that on May 6, 2016 she personally served the tenant with the 10 day Notice to End Tenancy for unpaid rent or utilities. A copy of the 10 day Notice to end Tenancy was not on file however the landlord's agent testified that it was form #RTB-30, signed and dated by the landlord on May 6, 2016, contained the address of the rental unit, stated the effective date of the notice and the grounds for ending the tenancy.

### Analysis

I am satisfied that the tenant was personally deemed served with the 10 day Notice to End Tenancy on May 6, 2016 pursuant to section 88 of the Act. Although a copy of the 10 Day Notice was not on file, I accept the landlord's agent's testimony and find the 10 Day Notice was in the approved form as per the requirements of Section 52 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of 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, as in the present case, 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, May 21, 2016.

I accept the landlord's uncontested evidence and claim for outstanding rent of \$2367.75.

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 for a total monetary award of \$2467.75.

The landlord continues to hold a security deposit of \$380.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$2087.75

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#### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2087.75. 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: July 12, 2016

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Residential Tenancy Branch