



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY  
and [tenant name suppressed to protect privacy]

## **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 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 their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided undisputed affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 23, 2016 and that it was returned as unclaimed. The landlord has submitted as evidence a copy of the Canada Post Customer Receipt Tracking number and a copy of the returned "unclaimed" envelope from Canada Post. Both parties confirmed that the landlord then served the tenant with a copy of the notice of hearing package in person approximately one week prior to the scheduled hearing date. The tenant confirmed receipt of the notice of hearing package in this manner. No issues were presented by either party regarding service. The tenant submitted no documentary evidence.

I accept the undisputed affirmed evidence of both parties and find that the tenant was properly service with the notice of hearing package and the submitted documentary evidence. Although the tenant did not claim the package, I am satisfied that the landlord properly served the tenant via Canada Post on June 23, 2016 and is deemed served 5 days later as per section 90 of the Act.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security and pet damage deposits?

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 February 1, 2016 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated January 26, 2016. The monthly rent is \$550.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$275.00 and a pet damage deposit of \$225.00 were paid on January 26, 2016.

The landlord seeks an order of possession and a monetary order for \$1,650.00 for unpaid rent.

The landlord clarified that the \$1,650.00 in unpaid rent consists of:

\$550.00	April Unpaid Rent
\$550.00	May Unpaid Rent
\$550.00	June Unpaid Rent

Both parties confirmed that the tenant made a partial payment on July 11, 2016 of \$1,100.00. The landlord clarified that the \$1,100.00 was applied to the \$1,650.00 balance and that the tenant continues to not pay rent for July and August. The landlord confirmed that this lowered the original claim, but that the tenant currently owes \$1,650.00 as no other rent has been paid as of the date of this hearing. The landlord provided testimony that after the partial rent of \$1,100.00 was paid a receipt/notice was issued to the tenant information her that the payment would be for use and occupancy only.

The landlord provided affirmed testimony that the tenants were served with the 10 Day Notice dated June 10, 2016 in person on June 10, 2016 in which the tenant signed in receipt. The 10 Day Notice states that the tenant failed to pay rent of \$1,650.00 that was due on June 1, 2016 and sets out an effective end of tenancy date of June 20,

2016. The landlord has submitted as proof of service of the 10 Day Notice a signed proof of service document dated June 10, 2016 as confirmation.

### Analysis

Section 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide evidence that she was entitled to deduct amounts for emergency repairs that she had conducted (pursuant to subsection 33(3)) or as a result of a prior order from the Residential Tenancy Branch.

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 landlord testified that the tenant continues to not pay rent for July and August. The tenant admits that she did not pay any rent except for the one payment of \$1,100.00 on July 11, 2016.

As the tenant has failed to pay her rent in full when due, I find that the 10 Day Notice issued June 10, 2016 is valid. The landlord was entitled to possession of the rental unit on June 20, 2016, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenant admits that she has not made any rent payments except on July 11, 2016 of \$1,100.00. I find that the landlord is entitled to the amount claimed of \$1,650.00 as the tenant has not disputed the currently rental arrear balance claimed by the landlord.

The landlord applied to keep the tenant's \$275.00 security and \$225.00 pet damage deposits. I allow the landlord to retain both 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 \$1,735.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Landlord's Monetary Award, Unpaid Rent	\$1,650.00
Offset Security/Pet Deposits	-500.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$1,250.00</b>

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: August 03, 2016

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Residential Tenancy Branch