



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OPR, MNR

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on October 6, 2016 for:

1. An Order cancelling a notice to end tenancy - Section 46.

The Landlord applied on October 21, 2016 for:

1. An Order of Possession - Section 55; and
2. A Monetary Order for unpaid rent or utilities - Section 67.

The Tenant did not attend the hearing to pursue its claims and as a result I dismiss the Tenant’s application. The Landlord served the Tenant with the Landlord’s application for dispute resolution by registered mail on October 26, 2016 as required under section 89 of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

The monetary order worksheet indicates that the Landlord claims an amount for an inspection of the rental unit. This amount was not included in the claimed amount set out in the application nor is any detail of this claim set out in the application. The application was not amended to increase the claimed amount to include the inspection. Section 2.2 of the Residential Tenancy Branch Rules of Procedure provides that a claim is limited to what is stated in the application. As the application does not include the claim for the inspection I dismiss this claim with leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to an order for unpaid rent?

Background and Evidence

The tenancy started on October 2013. Rent of \$1,150.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$575.00 as a security deposit. The Tenant failed to pay rental arrears of \$10,460.00 as set out in an agreement dated August 19, 2016 and on October 4, 2016 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door. The Tenant further failed to pay rent for October and November 2016. The Tenant has not moved out of the unit.

Analysis

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given the dismissal of the Tenant's application I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Based on the Landlord's evidence, as the Tenant is still in the unit, and as most of November 2016 has passed, I find that the Tenant has failed to pay rent as required under the tenancy agreement and that the Landlord is entitled to rental arrears of **\$10,460.00** and unpaid rent for October and November 2016 of **\$2,300.00**. Deducting the security deposit of **\$575.00** plus zero interest leaves **\$12,185.00** owed by the Tenant to the Landlord.

#### 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.

**I order** that the Landlord retain the **deposit** and interest of \$575.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$12,185.00**. If necessary, this order may be filed in the Small Claims 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: November 21, 2016

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Residential Tenancy Branch