



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF, O

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent;
- an order to keep all or part of the pet damage or security deposit; and
- recovery of the filing fee paid for this application from the tenant.

Both the landlord and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Issue(s) to be Decided

- Is the landlord entitled to an order for possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to a monetary order to keep all or part of the security deposit?
- Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The undisputed evidence established that a month to month tenancy started on November 1, 2015 pursuant to a written tenancy agreement. The rent is \$570 due on the first day of each month. The tenant paid a \$250.00 security deposit to the landlord on November 4, 2015.

The landlord and tenant agreed that there was a verbal agreement that the tenant would get a credit of \$100.00 towards the rent for the months of May, June, July, August and September for grass cutting. The tenant testified that in addition to the grass cutting he was also supposed to take over responsibility for maintaining the grounds of the property. The tenant testified that this arrangement was put into place after the city had served notices requiring the landlord to clean up and maintain the grounds.

The tenant agreed with the landlord's testimony that he had not paid rent for each of the months of August, September, October and November 2016. The tenant acknowledged that he personally received the 10 Day Notice from the landlord on September 29, 2016, with an effective move out date of October 23. The tenant acknowledged knowing that the effective move out date was October 23, 2016 despite the omission of the year in the Notice.

The 10 Day Notice indicated that it would be automatically cancelled if the landlord received \$570 that was due both on August 1, 2016 and September 1, 2016, the unpaid rent as at September 29, 2016, within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental unit by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant testified that he carried out his part of the agreement in maintaining the property for these months and that he should receive his \$100.00 credit such that the unpaid rent for August and September is \$470 for each month.

The landlord testified that he went to the property in August twice and once in September when he served the 10 Day Notice and that he didn't see that the grass was cut. The landlord, however, could not recall how high the grass was on either of those occasions. The landlord was demanding proof from the tenant that the grass was cut before agreeing to reduce the rent for those two months by \$100.00. The landlord testified that he hadn't asked the tenant for proof prior to the hearing.

The tenant testified that he cut the grass four times each month for the months of May to August. The tenant testified that September was rainy and the grass didn't grow as fast so he only had to cut it twice that month.

### Analysis

Based on the above, the testimony and documentary evidence, and on a balance of probabilities, I find the following.

I accept the testimony of the tenant that he cut the grass and maintained the grounds in accordance with the parties' verbal agreement for the months of August and September 2016. In making this finding I have taken into consideration that the landlord only requested proof from the tenant at the hearing and did not raise this with the tenant sooner. Furthermore, there was no evidence from the landlord that the landlord had to make any other arrangements to do the work that he claims the tenant did not do. Accordingly, I find that the tenant is entitled to a \$100 reduction in rent for each of the months of August and September 2016. However, the tenant still owes the landlord rent money.

Based upon the foregoing, I find that the landlord has established a total monetary claim in the amount of \$2,080 for unpaid rent for the months of August, September, October and November 2016.

I find that the tenant was served with a 10 Day Notice on September 29, 2016 and required the tenant to vacate the rental unit on October 23, 2016, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the 10 Day Notice to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me the tenant did not exercise either of these rights; therefore, pursuant to section 46(5) of the *Act*, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice.

Pursuant to section 72 of the *Act*, I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution, as the landlord's claim was successful.

Pursuant to section 72 of the *Act*, I find that the landlord is entitled to retain the security deposit in partial satisfaction of the claim.

Pursuant to section 67, the landlord is entitled to a monetary order in the total amount of \$1,930.00 as follows:

August Unpaid Rent	\$ 470.00
September Unpaid Rent	\$ 470.00
October Unpaid Rent	\$ 570.00
November Unpaid Rent	\$ 570.00
Filing Fee	\$ 100.00
Subtotal	\$ 2,180.00
Less Security Deposit	\$ 250.00
<b>Total</b>	<b>\$ 1,930.00</b>

As the tenancy has ended pursuant to section 46(5), I find that the landlord is entitled to an Order of possession that is effective two days after service on the tenant.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is entitled to recovery of the \$100.00 filing fee.

The landlord may retain the security deposit which I have set off against the rent that is owed.

The landlord is granted a monetary order in the amount of \$1,930.00 which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 20, 2016

---

Residential Tenancy Branch

