



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remax Management Solutions  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, LAT, OPR, OPC, MNR, MND, MNDC, MNSD, FF

### 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 November 18 with an amendment made on November 30, 2016 for:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order allowing the locks to be changed - Section 70.

The Landlord applied on November 28 with an amendment made on December 14, 2016 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67;
4. A Monetary Order for damages to the unit - Section 67;
5. An Order to retain the security deposit - Section 38; and
6. A Monetary Order for unpaid rent or utilities - Section 67.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Landlord claims damage to the unit. The Tenant continues to reside in the unit. The primary matter in dispute is the end of the tenancy and the payment of rent.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure (the “RTB Rules”) provides that all matters in an application must be related to each other. As the matter of damage to the unit is not related to whether the tenancy ends or unpaid rent and as the tenancy has yet to end allowing time for the Tenant to leave the unit clean and undamaged, I dismiss the Landlord’s claims for damage to the unit with leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to liquidated damages?

Background and Evidence

The tenancy started on November 1, 2016 on a fixed term to end April 30, 2018. At the end of the tenancy the Tenant is required to move out of the unit. Rent of \$1,286.25 is payable on the first day of each month. At the outset of a prior tenancy on October 9, 2015 the Landlord collected \$600.00 as security deposit and transferred this amount to the current tenancy agreement. The Landlord served the Tenant with two 10 day notices to end tenancy for unpaid rent (the “Notice”), the first Notice dated November 14, 2016.

The Tenant continues to reside in the unit but is in the process of moving out and expects to vacate the unit by January 5, 2016. The Tenant states that he no longer seeks a cancellation of the notice to end tenancy or a change of locks. The Tenant agrees that he paid no rent for November and December 2016 and for January 2017.

The Landlord claims unpaid rent of \$3,858.75 and an order of possession.

The Landlord states that the tenancy agreement requires the Tenant to pay liquidated damages of \$625.00. The Landlord states that in their business practice no tenant has ever been asked to initial a liquidated damages clause. The Tenant states that he did

not agree to any liquidated damages, that he was not aware of any liquidated damage clause in the tenancy agreement and that no such clause was pointed out to the Tenant when the tenancy agreement was signed. It is noted that the Landlord's application and monetary order worksheet does not set out any details of any claim for liquidated damages.

### 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. Given the Tenant's evidence of no longer disputing the end of the tenancy I dismiss the Tenant's application. As the Tenant's application is dismissed and as the Notice complies in form and content I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence that no rent has been paid as required by the tenancy agreement I find that the Landlord is entitled to unpaid rent of **\$3,858.75**.

Rule 2.2 of the RTB Rules provides that a claim is limited to what is stated in the application. The Landlord did not provide any details of a claim for liquidated damages in its application or amended application. This claim could not be reasonably expected in the circumstances. To allow the claim to proceed at this point would result in procedural unfairness. I therefore dismiss the claim for liquidated damages.

As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,958.75**. Deducting the security deposit plus zero interest of **\$600.00** from this amount leaves **\$3,358.75** owed by the Tenant.

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 \$600.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$3,358.75**. 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: January 06, 2017

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Residential Tenancy Branch