



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF, OPR, MNR, MNSD

### Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant seeks

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46; and
- recovery of the filing fee for this application from the landlord pursuant to section 72.

The landlord seeks:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- an order to retain all or part of the security deposit in partial satisfaction of the monetary claim pursuant to section 28; and
- recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties attended, I confirmed there was no issue with service of the 10 Day Notice or the respective applications. The landlord testified that the 10 Day Notice was served by posting it on the rental unit on December 8, 2016. The tenant confirmed receipt on that date. The tenant testified that she filed her application for dispute resolution on December 13, 2016 and personally served the application and all evidence on the landlord on that same date. The landlord confirmed receipt of the dispute resolution package. The landlord testified that he filed his application for

dispute resolution on December 14, 2016 and served it on the tenant by posting on the rental unit door on that date. The tenant confirmed receipt of the landlord's dispute resolution materials. In accordance with sections 71(2), 88 and 89 of the *Act*, I find that both parties were deemed served with all of the respective materials.

### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not 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? Are either of the parties entitled to the recovery of their filing fees from one another?

### Background and Evidence

The parties agreed on the following facts. This tenancy began in August, 2012, initially for a fixed one-year term which was renewed a number of times. It is currently a month-to-month tenancy. A security deposit of \$575.00 was paid by the tenant at the start of the tenancy and is still held by the landlord.

Both parties testified that the tenant overpaid the September, 2016 rent by \$20.00 paying \$1,200.00. The tenant testified that the overpayment was not intended to raise the monthly rent to \$1,200.00 thereafter and the monthly rent is \$1,180.00. The landlord testified that as there is currently no written record specifying the monthly rent amount, he was unsure if the rent is \$1,180.00 or \$1,200.00.

Both parties testified that the tenant has failed to make any rent payment for the months of October, November, December and January. The landlord testified that the total rent arrear is \$4,800.00 if the monthly rent is \$1,200.00 and \$4,720.00 if the monthly rent is \$1,180.00.

### Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case, the landlord testified that there was a rent arrear of \$3,600.00 at the time the 10 Day Notice was issued. The tenant acknowledges there is

a rent arrear but disputes the total amount saying it is based on a mistaken monthly rent of \$1,200.00. The tenant says the monthly rent is actually \$1,180.00.

I accept the tenant's evidence that the monthly rental amount is \$1,180.00 and not \$1,200.00. The landlord did not submit strong evidence that the rent is \$1,200.00 and testified that he was uncertain how much it was meant to be in the absence of a written tenancy agreement.

I accept the evidence of the parties that there is a rental arrear and that the tenant failed to pay the full rent due within the 5 days of service. Accordingly, I find that the tenancy ended on the corrected effective date of the 10 Day Notice, December 21, 2016. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the evidence of the parties that the rent has not been paid for the four months of October, November, December and January. Therefore, I find that the total rental arrear for this tenancy, based on a monthly rent of \$1,180.00, to be \$4,720.00. I issue a monetary award for unpaid rent of \$4,720.00 as at January 13, 2016, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. The tenant's application for recovery of her filing fee is dismissed without leave to reapply.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$575.00 of the tenant's security deposit in satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

The tenant's application is dismissed.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$4,245.00 under the following terms, which allows the landlord to recover unpaid rent for the months of December, and January, and the filing fee for their application:

<b>Item</b>	<b>Amount</b>
Unpaid Rent October	\$1,180.00
Unpaid Rent November	\$1,180.00
Unpaid Rent December	\$1,180.00
Unpaid Rent January	\$1,180.00
Less Security Deposit	-\$575.00
Filing Fees	\$100.00
<b>Total Monetary Order</b>	<b>\$4,245.00</b>

The tenant must be served with this Order as soon as possible. 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*.

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Dated: January 16, 2017

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**Residential Tenancy Branch**