



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by both parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The tenant requested:

- cancellation of the landlord's 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) pursuant to section 46 of the *Act*;

The landlord requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*;
- authorization to retain the security deposit pursuant to section 72 of the *Act*; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Although the landlord attended this hearing, the tenant did not appear. The tenant's failure to attend this hearing and present evidence relating to his application leads me to order that his application to cancel the 10 Day Notice is dismissed without liberty to reapply.

The landlord was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent (“10 Day Notice”) for unpaid rent was posted on the tenant's door on January 7, 2017. Pursuant to sections 88 and 90 of the *Act*, the tenant was deemed served with the 10 Day Notice on January 10, 2017.

The landlord gave sworn testimony that on January 17, 2017 a copy of the Application for Dispute Resolution hearing package as well as the evidentiary package was sent to the tenant by Registered Mail. A copy of the Canada Post tracking number was provided to the hearing as part of the evidentiary package. Pursuant to sections 88, 89

and 90 of the *Act*, the tenant was deemed served with the dispute resolution hearing package on January 22, 2017.

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?

Is the landlord entitled to a Monetary Order for unpaid rent?

Can the landlord keep all or part of the security deposit as compensation for damage or loss under the *Act*?

Background and Evidence

Undisputed sworn testimony provided during the hearing by the landlord explained that the tenancy in question began on December 15, 2016. Rent was \$1,200.00 per month and a security deposit of \$600.00 continues to be held by the landlord..

The landlord stated that the tenant has failed to pay rent for January and February 2017.

The landlord is seeking a Money Order of \$2,400.00 to recover monies owed for non-payment of rent for the following months.

Item	Amount
Unpaid rent for January 2017	\$1,200.00
Unpaid rent for February 2017	1,200.00
Total =	\$2,400.00

The landlord has also applied to retain the security deposit as compensation for monies owed for unpaid rent, and for recovery of the filing fee.

Analysis – 10 Day Notice

Based on the 10 Day Notice entered as written evidence and the landlord's sworn testimony, I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and my finding that the landlord's 10 Day Notice complies with section 52 of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, January 17, 2017, and the landlord is entitled to an Order of Possession.

Analysis – Monetary Order

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The landlord provided testimony and written evidence to the hearing, demonstrating that rent was not paid for January and February 2017.

The landlord sought to retain the security deposit for this tenancy. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's \$600.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in her application, she is entitled to recover the \$100.00 filing fee from the tenant pursuant to section 72 of the *Act*.

Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed.

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. 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.

I am making a Monetary Order of \$1,900.00 in favour of the landlord as follows:

Item	Amount
Unpaid rent for January 2017	\$1,200.00
Unpaid rent for February 2017	1,200.00
Recovery of Filing Fee	100.00
Less Security Deposit	(-600.00)

Total =	\$1,900.00
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The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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: February 14, 2017

Residential Tenancy Branch