



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION  
and [tenant name supp  
**DECISION**

Dispute codes      OPR MNR MND FF

## Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and damages pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:20 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. In the Notice of Hearing, the parties were provided a conference participant code for another Arbitrator. The landlord called into the conference using the code provided and was directed to an alternative conference code by the other Arbitrator. The tenant did not call into the conference call using the provided code therefore was not able to be directed to an alternative code by the other Arbitrator. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord's agent testified that on January 27, 2017, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail tracking number in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

### Issues

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent and damages?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenancy began on April 1, 2008 and the current monthly rent is \$550.00 payable on the 1<sup>st</sup> day of each month.

The landlord's agent testified that on January 10, 2017 the tenant was served with a 10 day Notice to End Tenancy for unpaid rent or utilities by regular mail. The landlord's agent testified that the tenant did not pay the outstanding amount of rent as indicated in the Notice within five days of service of the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$3034.00. The landlord's agent testified that this includes rent arrears in the amount of \$1094.00 as of October 31, 2016 plus \$290.00 from November 2016 rent plus unpaid rent of \$550.00 for each of December 2016, January 2017 and February 2017. The landlord is also claiming \$145.95 as a chargeback for damage caused by the tenant to a deck rail. The landlord submitted copies of a letter issued to the tenant for this chargeback and an invoice for the repair work performed.

### Analysis

I am satisfied that the tenant was deemed served with the 10 day Notice to End Tenancy on January 15, 2017, five days after its mailing, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, January 25, 2017.

I find that the Notice complies with the requirements of section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires 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, unless the tenant has a right under this Act to deduct all or a portion of the rent. I accept the landlord's uncontested evidence and claim for outstanding rent of \$3034.00.

The landlord provided insufficient evidence of the alleged damage to the handrail and if or how this damage was caused by the tenant. The letter and invoice submitted by the landlord do not on their own support a finding as to the extent of the alleged damage and whether or not the damage was caused due to the actions or neglect of the tenant. This part of the landlord's claim is dismissed.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$3134.00.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on 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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3134.00. 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*.

Dated: February 23, 2017

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Residential Tenancy Branch