



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on January 16, 2017 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- an order allowing the Landlord to keep all or part of the security deposit or pet damage deposit;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf and provided affirmed testimony. The Tenant did not attend the hearing.

The Landlord testified his Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenant by registered mail on January 20, 2017. In support, the Landlord submitted a Canada Post registered mail receipt, which included a tracking number. The Landlord requested that I look at the Canada Post tracking information online, which confirmed the Application package was received by the Tenant on January 24, 2017. I find that the Landlord's Application package was received by the Tenant on that date.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to keep all or part of the security deposit or pet damage deposit?
4. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or a tenancy agreement?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. It confirms a fixed term tenancy from September 1, 2016 to February 28, 2017. The tenancy includes a move-out clause, initialled by the parties, that states:

*At the end of this fixed length of time...the tenancy ends and the tenant must move out of the residential unit.*

[Reproduced as written.]

Rent in the amount of \$1,200.00 per month is due on the first day of each month. The Tenant paid a security deposit to the Landlord in the amount of \$600.00, which the Landlord holds.

The Landlord testified the Tenant did not pay rent when due on January 1, 2017. Accordingly, he issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 5, 2017 (the "10 Day Notice"). The amount outstanding at that time was \$1,200.00. According to the Landlord, the 10 Day Notice was served on the Tenant, in person, on January 5, 2017. A copy of the 10 Day Notice was submitted with the Landlord's documentary evidence.

The Landlord confirmed outstanding rent was subsequently received from the Tenant on January 18, 2017. The Landlord provided with his documentary evidence a handwritten note, signed by the parties, confirming payment by the Tenant on that date for "use and occupancy only". The Landlord testified the Tenant also did not pay rent when due on February 1, 2017, and that \$1,200.00 remains unpaid.

The Landlord requested an order granting him recovery of the \$100.00 filing fee he paid to make the Application, and that he be permitted to apply the security deposit held to any monetary order I make.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days to either pay rent or file an application for dispute resolution. When a tenant does not pay rent or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, the Landlord testified, and I find, that the Tenant did not pay rent when due on January 1, 2017. Accordingly, the Landlord served the Tenant with the 10 Day Notice, in person, on January 5, 2017. Having received the 10 Day Notice on that date, the Tenant had until January 10, 2017 to pay rent or dispute the 10 Day Notice by filing an application for dispute resolution. She did neither. Although the Tenant made a payment on January 18, 2017, which was accepted for "use and occupancy only", rent was not paid within the specified timeframe. As a result, I find the Tenant is presumed to have accepted the tenancy ended on the effective date of the notice. Therefore, the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

The Landlord also testified that rent was not paid when due on February 1, 2017, and that \$1,200.00 remains outstanding. The Tenant did not attend the hearing to dispute this amount. Accordingly, I find the Landlord is entitled to a monetary award of \$1,200.00 for unpaid rent.

Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make this Application. Further, the Landlord is permitted to retain the security deposit in partial satisfaction of the monetary order described below, pursuant to section 72 of the *Act*.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$700.00, which has been calculated as follows:

<b>Item</b>	<b>Amount awarded</b>
February 2017 rent:	\$1,200.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$600.00)
<b>TOTAL:</b>	<b>\$700.00</b>

### Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$700.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 9, 2017

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Residential Tenancy Branch