



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- An Order of Possession for unpaid rent pursuant to section 55 of the *Act*; and
- A Monetary Order for unpaid rent pursuant to section 67 of the *Act*.

The landlord was represented at the hearing by their agent, KL. The tenant did not appear. KL confirmed that he had full authority to make decisions and speak on behalf of the landlords. KL, ("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 December 12, 2016. Pursuant to sections 88 and 90 of the *Act*, the tenant was deemed served with the 10 Day Notice on December 15, 2016.

The landlord gave sworn testimony that on January 18, 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 Canada Post tracking number was provided to the hearing. Pursuant to sections 88, 89 and 90 of the *Act*, the tenant was deemed served with the dispute resolution hearing package on January 23, 2017.

### Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession?
- Are the landlords entitled to a Monetary Order for unpaid rent?

### Background and Evidence

The landlord gave evidence that the original lease for the premises began on December 1, 2005. Monthly rent for this unit was established at \$925.00. The landlord testified that he continued to hold the \$450.00 security deposit. The landlord explained that in September 2008, monthly rent rose to \$965.00

The landlord has applied for an Order of Possession for repeated non-payment of rent for the months running from April to December 2015 and from January to December 2016. When asked why the landlord waited nearly two years to file a claim with the *Residential Tenancy Branch*, the landlord explained that the property owner lives overseas and was informed by the tenant that the structures on the property would be rebuilt. Additionally, the landlord testified that he has had great difficulty trying to get in touch with the tenant.

The landlord stated that he is also seeking a Monetary Order for non-payment of rent for April to December 2015, as well as January to December 2016. During the course of his testimony, the landlord made an oral request to amend the amount of money sought in his application for a monetary award, so that it may include unpaid rent for January and February 2017. I allow the landlord's oral request to amend his application to reflect this increase from the \$19,038.00 identified in the landlord's Monetary Order Worksheet to a requested Monetary Order of \$22,195.00.

#### Analysis

The tenant failed to pay the rent from April to December 2015 and from January to December 2016 within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 2, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

#### Monetary Order

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to their claim for a monetary award.

I accept this uncontested evidence offered by the landlord and find that the landlord is entitled to a monetary award of \$22,195.00, which includes unpaid rent for January and February 2017.

While he has not applied for it, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's \$450.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

#### Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenant. **If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.**

**I issue a Monetary Order in the landlord's favour in the amount of \$21,745.00 against the tenant for the following items.**

Item	Amount
Unpaid rent for April 2015 – December 2015 (\$965.00 x 9 months)	\$ 8,685.00
Unpaid rent for January 2016 – December 2016 (\$965.00 x 12 months)	11,580.00
Unpaid rent for January 2017	965.00
Unpaid rent for February 2017	965.00
Less Security Deposit	(-450.00)
Total =	\$21,745.00

The landlord is provided with a Monetary Order in the above terms and 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*.

Dated: February 14, 2017

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Residential Tenancy Branch

