



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- to recover the filing fee for their application from the tenant.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing") was considered.

The landlord testified that he served a copy of the Notice of Hearing along with his application by handing a copy to the tenant on January 27, 2017. Based upon the undisputed testimony of the landlord and in accordance with sections 89 of the Act, I find that the tenant has been served with the Notice of Hearing on January 27, 2017.

### Issue(s) to be Decided

- Is the landlord entitled to an order for possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to recover the filing fee for their application from the tenant?

### Background and Evidence

The landlord's testimony established that a month to month tenancy started on October 15, 2016 pursuant to an oral tenancy agreement. Rent in the amount of \$500.00 is due

on the first day of each month. The landlord received a security deposit in the amount of \$250.00 on October 15, 2016.

The landlord testified that the tenant did not pay rent for each of the months of January and February 2017. The landlord is seeking a monetary order in the amount of \$1,000.00 for unpaid rent for these months. The landlord is seeking to amend his application to include the full amount of unpaid rent for the month of February 2017.

The landlord testified that on January 12, 2017 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), which had an effective date of January 27, 2017, was handed to the tenant. The 10 Day Notice indicates that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental unit by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The amount of unpaid rent shown on the 10 Day Notice is \$500.00 as at January 1, 2017. The landlord testified that the tenant did not pay the rent owing within the five days or file an Application for Dispute Resolution. The landlord further testified that the tenant did not move out of the rental unit and the landlord has not received any further rent payments from the tenant.

The landlord is seeking an order of possession for unpaid rent.

The landlord is also seeking recovery of the \$100.00 filing fee for their application from the tenant.

### Analysis

Based on the above undisputed testimony and documentary evidence, and on a balance of probabilities, I find the following.

As the tenant was served with the Notice of Dispute Resolution Hearing and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

I find that the tenant was required to pay rent in the amount of \$500.00 due on the first day of each month pursuant to an oral tenancy agreement. I find that the tenant did not

pay rent that was due for each of the months of January 2017 and February 2017. Accordingly, I find that the landlord has established a total monetary claim in the amount of \$1,000 for unpaid rent.

I find that the tenant is not prejudiced by the landlord's request to amend his application to include the unpaid rent for the month of February 2017 as the tenant knew or ought to have known that he was required to pay the rent when due.

I authorize the landlord to apply the tenant's security deposit in the amount of \$250.00 against the amounts owed by the tenant for unpaid rent.

Section 46(1) of the *Act* stipulates that a 10 day Notice is effective 10 days after the date that the tenant receives the Notice.

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on January 17, 2017, the fifth day after its mailing.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the 10 Day Notice to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenants exercised either of these rights; therefore, pursuant to section 46(5) of the *Act*, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice, January 27, 2017.

As the tenancy has ended pursuant to section 46(5), I find that the landlord is entitled to an Order of possession that is effective two days after service on the tenant.

As the landlord's application is successful, I find that the landlord is entitled to the filing fee for their application from the tenant.

Based on the foregoing, I find that the landlord is entitled to a monetary order in the amount of \$850.00.00 for unpaid rent as follows:

January 2017 Unpaid Rent	\$ 500.00
February 2017 Unpaid Rent	\$ 500.00
Filing Fee	\$ 100.00
<b>Sub Total</b>	<b>\$ 1,100.00</b>
Less Security Deposit	\$ 250.00
<b>Total Monetary Award</b>	<b>\$ 850.00</b>

### Conclusion

Pursuant to section 67, the landlord is granted a monetary order in the amount of **\$850.00**, for unpaid rent and the filing fee, less the tenant's security deposit, which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 22, 2017

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Residential Tenancy Branch