



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

[Tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a Monetary Order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), was served on the tenant by registered mail on January 26, 2017. The landlord provided a Canada Post tracking number as evidence of service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on January 31, 2017, five days after mailing.

The landlord testified that the Interim Decision of the Residential Tenancy Branch adjourning the Direct Request process to a participatory hearing was received on February 24, 2017. The landlord testified that the Interim Decision and Notice of Participatory Hearing were served on the tenant on that date by registered mail. The landlord provided a Canada Post tracking number as evidence of service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with notice of the participatory hearing on March 1, 2017, five days after mailing.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenant has failed to pay the rent for February and March and the total arrears as of the date of the hearing is \$1,416.00. As the increase in amount of rent

owing can be reasonably anticipated, pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlord's monetary claim from \$472.00 to \$1,416.00.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation as claimed?

#### Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month-to-month tenancy began February 1, 2014. The current rent is \$472.00 payable on the first of the month. A security deposit of \$356.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. The tenant continues to reside in the rental unit at the time of the hearing.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$472.00, the amount initially sought in the 10 Day Notice. The landlord testified that the tenant subsequently failed to pay the rent owed for the months of February and March, and the total amount owing for the tenancy as of March 23, 2017, the date of the hearing, is \$1,416.00.

#### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$472.00. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, February 9, 2017. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$1,416.00. I issue a monetary award for unpaid rent of \$1,416.00 as at March 23, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$356.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,060.00 under the following terms, which allows the landlord to recover unpaid rent:

<b>Item</b>	<b>Amount</b>
Unpaid Rent January	\$472.00
Unpaid Rent February	\$472.00
Unpaid Rent March	\$472.00
Less Security Deposit	-\$356.00
<b>Total Monetary Order</b>	<b>\$1,060.00</b>

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: March 23, 2017

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Residential Tenancy Branch