



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding REALTY EX  
**DECISION**

Dispute codes OPR MNR

## 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 pursuant to section 67;

This application was originally heard by way of a Direct Request Proceeding and on February 8, 2017 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide sworn testimony and present evidence.

## Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord's agent testified that the tenant had not yet vacated the rental unit and therefore asked to amend her claim to include outstanding rent in the amount of \$3500.00 that was payable on March 1, 2017. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

## Issues

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

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

## Background and Evidence

The tenancy began on October 1, 2016 with a monthly rent of \$2600.00 payable on the 1<sup>st</sup> day of each month. The original agreement was for the upper portion of the residential house. On

January 8, 2017 the parties entered into a new agreement to lease the entire house and the monthly rent was increased to \$3500.00 effective February 1, 2017. The tenant paid a security deposit of \$1300.00 at the start of the tenancy and an additional deposit of \$450.00 on January 8, 2017 which the landlord continues to hold.

The landlord's agent testified that on January 25, 2017 the tenant was served with the 10 day Notice to End Tenancy for unpaid rent or utilities by registered mail. The tenant acknowledged receipt of the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$17,400.00. The landlord testified that this includes unpaid rent in the amount of \$2600.00 per month for the months of October 2016, November 2016, December 2016 and January 2017 and the amount of \$3500.00 per month for the months of February 2017 and March 2017. The landlord submitted copies of the returned cheques from the bank for the months of October 2016, November 2016 and January 2017. The landlord did not provide a copy of the returned cheque for December 2016 but testified the rent was not paid for this month also. The landlord had post-dated cheques from the tenant for the months of February 2017 and March 2017 and testified that they were not deposited as the bank advised the account was closed.

The tenant testified that all the rent was paid and submitted a copy of a note by which she argues the landlord acknowledged receiving all the rent cheques. The tenant also submitted two copies of rent cheques issued directly in the landlord's name by BC Employment & Assistance.

The landlord's agent testified that no cheques were received by the landlord directly from the Ministry and the note submitted by the tenant is only an acknowledgement of receiving the physical cheques and not evidence of the cheques being cashed.

### Analysis

I am satisfied that the tenant was deemed served with the 10 day Notice to End Tenancy on January 30, 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.

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 testimony of the landlord's agent and the copies of the returned cheques submitted as evidence of the rent not being paid. The tenant has not provided any supporting evidence such as bank statements or confirmation from the Ministry that any of the cheques were cashed by the landlord.

I find that the tenant was obligated to but failed to pay monthly rent in the amount of \$2600.00 for the period of October 2016 to January 2017 and \$3500.00 for the period of February 2017 to March 2017. I accept the landlord's claim for outstanding rent of \$17,400.00.

The landlord continues to hold a security deposit of \$1750.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 72 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$15,650.00.

As the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

### 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 \$15,650.00. 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: March 08, 2017

---

Residential Tenancy Branch