



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, O, OPB, 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;
- an order of possession for the end of a fixed term tenancy;
- a monetary order to keep all or part of the pet damage or security deposit;
- an order for unspecified other relief; and
- recovery of the filing fee paid for this application from the tenant.

The landlord's claim for an order of possession for the end of a fixed term tenancy was made pursuant to an amendment to the landlord's Application (the "Amended Application").

The tenant did not appear. The landlord's agent appeared (the "landlord") at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. 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 landlord's Application, Amended Application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") were considered.

The landlord testified that she sent the tenant a copy of the Notice of Hearing, along with the landlord's initial Application by registered mail. The landlord testified that she sent the registered mailing to the rental unit on February 1, 2017. The landlord provided the Canada Post Tracking Number. Taking into account that the online registered mail tracking information supports the undisputed testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Notice of Hearing and the landlord's Application as of February 5, 2017, the fifth day after the registered mailing.

The landlord testified that she sent the tenant a copy of the Amended Application on February 8, 2017 by registered mail to the rental unit. The landlord testified that she could not provide the Canada Post Tracking Number as she had discarded it accidentally. Taking into account the undisputed testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the landlord's Amended Application as of February 13, 2017, the fifth day after the registered mailing.

### Preliminary and Procedural Matters

As the landlord did not specify the other relief that was claimed in their initial Application, I dismiss the landlord's claim for unspecified other relief.

### Issues to be Decided

- Is the landlord entitled to an order for possession?
- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to an order of possession for the end of a fixed term tenancy?
- Is the landlord entitled to a monetary order to keep all or part of the pet damage or security deposit?
- Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord's evidence established that the tenant entered into a one year fixed term tenancy starting January 1, 2016 and ending December 31, 2016, pursuant to a written tenancy agreement. The terms of the tenancy agreement required the tenant to vacate the rental unit at the end of the fixed term. For the duration of the fixed term tenancy, rent in the amount of \$890.00 was due on the first day of each month. The tenant provided a security deposit in the amount of \$230.00 on November 1, 2007. The landlord testified that the tenant has resided in the rental unit for many years pursuant to a number of different tenancy agreements for various fixed terms that were renewed by the tenant at the end of each fixed term.

The landlord testified that a Notice of Rent Increase was issued September 1, 2016 increasing the rent from \$890.00 to \$1,000.00, effective January 1, 2017. The landlord testified that she served the tenant with a copy of the Notice of Rent Increase personally

by leaving a copy with the tenant on September 1, 2016. The landlord explained that the tenant was served with a Notice of Rent Increase that would take effect after the end of the fixed term tenancy so as to provide the tenant with ample notice of the new rent amount if the tenant decided to continue the tenancy under a new fixed term tenancy agreement.

The landlord testified that the tenant did not vacate the rental unit at the end of the fixed term tenancy as required by the tenancy agreement. The landlord testified that the tenant only paid rent for 'use and occupancy' in the amount of \$890.00 for the month of January 2017. The landlord is seeking unpaid rent in the amount of \$110.00 on the basis of the rent increase that was issued. The landlord's position is that the tenant is required to pay rent in the amount of \$1,000.00 starting January 1, 2017.

The landlord testified that on January 21, 2017, the landlord served the tenant with a 10 Day Notice To End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), with an effective date of February 20, 2017, by leaving a copy with the tenant. The landlord testified that the tenant did not pay the rent arrears after receiving the 10 Day Notice.

The landlord testified that the tenant did not pay any rent for 'use and occupancy' for the month of February 2017. The landlord is seeking unpaid rent in the amount of \$1,000.00 for the month of February 2017 based upon the Notice of Rent Increase. The landlord requested to amend their application to include the full amount of unpaid rent.

The landlord is seeking a total monetary order for unpaid rent in the amount of \$1,110.00 for rent due for each of the months of January and February 2017. The landlord is also seeking an Order of Possession for the unpaid rent.

The landlord is also seeking an Order of Possession on the basis that the fixed term tenancy ended on December 31, 2016 and the tenancy agreement requires the tenant to vacate the rental unit at the end of the fixed term tenancy.

The landlord is seeking a monetary order to recover of the \$100.00 filing fee.

The landlord is requesting to apply the tenant's security deposit in the amount of \$230.00 against the amounts owed by the tenant.

### Analysis

Based upon the undisputed evidence of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the dispute resolution hearing package and did not attend the hearing, I consider this matter to be unopposed by the tenant. However, I find the landlord's application is only partially successful based upon the landlord's evidence.

I find that the tenant was required to vacate the rental unit on December 31, 2017, pursuant to the written tenancy agreement. As the tenant did not sign a new tenancy agreement, I find that there is insufficient evidence that the tenant agreed to the increased rent amount of \$1,000.00. In making this finding, I have taken into consideration the landlord's explanation for issuing the Notice of Rent Increase. The landlord testified that the Notice of Rent Increase was issued for the purpose of putting the tenant on notice as to what the new rent amount would be *if* the tenant chose to enter into a new tenancy agreement. The tenant chose not to enter into a new tenancy agreement but instead to breach the fixed term tenancy agreement by not vacating the rental unit as required. Therefore, I find that the rent is \$890.00 due on the first day of each month pursuant to the tenancy agreement; and not \$1,000.00 based on the Notice of Rent Increase. In any event, the amount of rent increase exceeded the amount allowed under the regulations. Accordingly, unless the tenant entered into a new tenancy agreement agreeing to that amount, the rent increase would not have been allowed.

Based on the foregoing, I find that the tenant paid the full amount of rent due for the month of January 2017. Therefore, I find that the landlord is not entitled to their claim for \$110.00 for unpaid rent for the month of January 2017.

As the tenant had paid the full amount of rent due for the month of January 2017, I find that there was no unpaid rent owing to the landlord when the 10 Day Notice was served on the tenant. Therefore, I find that the 10 Day Notice is not valid. As a result, I find that the landlord is not entitled to an Order of Possession for unpaid rent and I dismiss this claim.

I find, however, that the landlord is entitled to an Order of Possession on the basis that the fixed term tenancy has ended, and the tenancy agreement required the tenant to vacate the rental unit at the end of the fixed term tenancy, pursuant to section 55(2)(c) of the *Act*.

As the fixed term tenancy ended on December 31, 2016 and the tenant did not vacate the rental unit, I find that the tenant is required to pay the landlord rent for 'use and

occupancy'. I find that the tenant did not pay rent in the amount of \$890.00 due for the month of February 2017.

I accept the landlord's request to amend the landlord's Application to include the full amount of unpaid rent for February 2017. I find that there is no prejudice to the tenant as they knew or ought to have known the full amount of rent was due for the month of February 2017. Therefore, I find that the landlord is entitled to unpaid rent in the amount of \$890.00 for the month of February 2017.

As the landlord's application is substantially successful, I find that the landlord is entitled to recover the \$100 filing fee from the tenant.

The landlord has requested to apply the tenant's security deposit in the amount of \$230.00 against the amounts owed by the tenant. Based upon the fact that the security deposit was collected on November 1, 2007, I find that the tenant is entitled to interest payable on the amount of the security deposit which is calculated to be \$4.04. Therefore, I allow the landlord to apply the security deposit with interest in the amount of \$234.04 against the amounts owed by the tenant.

Based on the foregoing, I find that the landlord is entitled to a monetary order in the amount of \$755.96 as follows:

February Unpaid Rent	\$ 890.00
Filing Fee	\$ 100.00
<b>Subtotal</b>	<b>\$ 990.00</b>
Less Security Deposit plus Interest (\$230.00 + \$4.04)	\$ 234.04
<b>Total Monetary Award</b>	<b>\$ 755.96</b>

Conclusion

The tenancy will not end on the basis of the 10 Day Notice, but instead, on the basis of the end of the fixed term tenancy.

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.

The landlord is granted a monetary Order in the amount of \$755.96 for unpaid rent for the month of February 2017 and the filing fee, less the security deposit with interest, 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.

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: March 1, 2017

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Residential Tenancy Branch