



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROOKMERE GARDENS INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act"):

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent pursuant to section 67;
- authorization to retain the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 10 Day Notice, the landlord's application for dispute resolution or the evidentiary materials. The tenant confirmed receipt of the landlord's materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with copies of the landlord's 10 Day Notice, the application and the evidentiary materials.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord testified that there has been some payments made by the tenant and additional monthly rent coming due since the application was filed. The landlord said that the actual arrear as of the date of the hearing is \$3,637.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as I find that it is reasonable to anticipate that the corrected total amount of rent arrear would be sought, I amend the landlord's Application to decrease the landlord's monetary claim from \$3,768.00 to \$3,637.00.

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?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties agreed on the following facts. This tenancy began in May, 2006. The current monthly rent is \$699.00 payable on the first of the month. A security deposit of \$330.00 was provided by the tenant at the start of the tenancy and is still held by the landlord.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$3,638.00, the amount initially sought in the 10 Day Notice. The parties testified that the tenant has made some cash payments that were accepted by the landlord for use and occupancy only. The parties agreed that the tenancy remains in arrears by \$3,637.00 as of April 13, 2017, the date of the hearing.

Analysis

I accept the evidence of the parties that the tenant was obligated to pay the monthly rent in the amount of \$699.00. I accept the landlord's undisputed evidence 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. I accept the landlord's undisputed evidence that the cash payment made by the tenant was accepted for use and occupancy only and did not reinstate the tenancy.

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, March 16, 2017. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the parties' testimony that the total amount of arrears for this tenancy is \$3,637.00. I issue a monetary award in the landlord's favour for unpaid rent of \$3,637.00 as at April 13, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$330.00 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 \$3,407.00 under the following terms, which allows the landlord to recover unpaid rent and the filing fee for their application:

Item	Amount
Unpaid Rent	\$3,637.00
Filing Fees	\$100.00
Less Security Deposit	-\$330.00
<b>Total Monetary Order</b>	<b>\$3,407.00</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: April 13, 2017

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Residential Tenancy Branch