



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF MNDC MNR MNSD OPR

### Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55 of the *Act*;
- an Order to retain the security deposit pursuant to section 38 *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*; and
- a Monetary Order for unpaid rent and for money owed pursuant to section 67 of the *Act*;

Although the landlord attended this hearing, the tenant did not appear. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent (“10 Day Notice”) for unpaid rent was handed to the tenant on February 20, 2017. Pursuant to sections 88 and 90 of the *Act*, the tenant was deemed served with the 10 Day Notice on February 20, 2017.

The landlord gave sworn testimony that “on March 14<sup>th</sup> or 15<sup>th</sup>” she provided the tenant in person with a copy of the Application for Dispute Resolution hearing package as well as the evidentiary package. In addition, a copy of both documents was sent to the tenant by Registered Mail on March 17, 2017. A copy of the Canada Post tracking number was provided to the hearing as part of the evidentiary package. Pursuant to sections 88, 89 and 90 of the *Act*, the tenant was deemed served with the dispute resolution hearing and evidentiary package on March 23, 2017.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order?

- Can the landlord retain the security deposit?
- Can the landlord recover the filing fee?

### Background and Evidence

Undisputed sworn testimony provided during the hearing by the landlord explained that the tenancy in question began on August 1, 2016. Rent was \$1,600.00 per month and a security deposit of \$800.00 was collected at the outset of the hearing and continues to be held by the landlord. A copy of the residential tenancy agreement was submitted to the hearing demonstrating that the tenant was also responsible for 50% of the utilities (hydro and gas) associated with the property.

The landlord stated that the tenant has failed to pay rent in full in October 2016, and January, February, March 2017. In addition, no rent has been paid for April 2017.

The landlord is seeking a Monetary Order of \$6,000.00 to recover monies owed for incomplete or non-payment of rent, as well as outstanding utilities for the following months.

<b>Item</b>	<b>Amount</b>
Unpaid partial rent for October 2016	\$1,500.00
Unpaid partial rent for January 2017	300.00
Unpaid partial rent for February 2017	1,350.00
Unpaid partial rent for March 2017	900.00
Unpaid rent for April 2017	1,600.00
Unpaid utilities for January and March 2017	350.00
<b>Total =</b>	<b>\$6,000.00</b>

### Analysis – Order of Possession

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days has led to the end of the tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 1, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be

given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

### Monetary Order

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The landlord provided testimony and written evidence to the hearing, demonstrating that rent was not paid in full in October 2016, and January, February, March 2017. In addition, no rent has been paid for April 2017. The landlord also supplied evidence and testimony demonstrating that the tenant had unpaid utilities owing for January and March 2017 in the amount of \$350.00

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a Monetary Order of \$6,000.00 for unpaid rent.

As the landlord was successful in her application she may recover the \$100.00 filing fee from the tenant pursuant to section 72.

Using the offsetting provision contained in the *Act* under section 72, I allow the landlord to retain the tenant's \$800.00 security deposit in partial satisfaction for the Monetary Order.

### Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. The landlord is provided with a formal copy of an Order of Possession effective 2 days after service. Should the tenant fail to comply with this Order, this Order may be enforced as an Order of the Supreme Court of British Columbia.

I make a Monetary Order of \$5,300.00 in favour of the landlord as follows:

Item	Amount
Unpaid partial rent for October 2016	\$1,500.00
Unpaid partial rent for January 2017	300.00
Unpaid partial rent for February 2017	1,350.00
Unpaid partial rent for March 2017	900.00
Unpaid rent for April 2017	1,600.00
Unpaid utilities for January and March 2017	350.00
Recovery of Filing Fee	100.00
Less Security Deposit	(-800.00)
<b>Total =</b>	<b>\$5,300.00</b>

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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