



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 pursuant to section 55 and a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I waited until 11:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions with respect to her application.

The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was served to the tenant by leaving a copy at the tenant's residence with an adult daughter who was residing with the tenant on March 4, 2017. The landlord testified that she served the tenant with her Application for Dispute Resolution hearing package ("ADR") on March 21, 2017. I accept that the tenant was duly served with the 10 Day Notice on March 4, 2017 in accordance with section 88(e) of the Act. I find that the tenant was deemed served with the landlord's ADR on March 26, 2017 (5 days after its mailing) by registered mail.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Unpaid Rent?

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

### Background and Evidence

The landlord gave evidence that this month to month tenancy began on December 15, 2016. The rental amount for this unit was established at \$975.00. The landlord testified that she continued to hold the \$487.00 security deposit paid by the tenant on December

12, 2016. The landlord testified that, despite repeated promises to vacate the rental unit, the tenant has not done so.

The landlord testified that the tenant did not pay rent of \$975.00 due on March 1, 2017 but that she was entitled to a reduction of \$50.00 as a result of an overpayment from the previous month (February). The landlord testified that the tenant continues to owe \$925.00 (the amount indicated on the 10 Day Notice) as of the date of this hearing.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant. The landlord testified that the tenant did not pay the March 2017 rent amount (\$925.00) after receiving the 10 Day Notice on March 4, 2017. The landlord submitted text correspondence between herself and the tenant where the tenant provides a variety of reasons for failing to pay her rent on time and promises to do so. Instead of payment, she told the landlord that she would vacate the residence. However, the landlord testified that, as of the date of this hearing, the tenant has not vacated the rental unit. After the expiration of that 10 Day period, the landlord applied for an Order of Possession.

The landlord also applied for a monetary award of \$1900.00 for the months of March 2017 (\$925.00) and April 2017 (\$975.00).

### Analysis

I find that the landlord is entitled to a 2 day Order of Possession. The tenant failed to pay the March 2017 rental amount on the first of the month. The tenant failed to pay the March 2017 rental amount owed within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application to dispute the 10 Day Notice 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 led to the end of his tenancy on the effective date of the notice. The tenant was required to vacate the premises by March 14, 2017.

I find that the landlord is also entitled to receive a monetary order for unpaid rent totalling \$1900.00. The landlord provided undisputed testimony, supported by her documentary evidence that the tenant owes \$925.00 towards March 2017 rent and \$975.00 towards April 2017 rent. I accept this uncontested evidence offered by the landlord that the tenant continues to reside in the rental unit and has failed to pay \$1900.00 owed to the landlord for March and April 2017.

I note that the landlord originally applied to recover \$925.00 as the April 2017 rent had not come due as of the date of the filing of her application. I accept the testimony of the landlord that, as of the date of this hearing (April 24, 2017), the tenant has not paid April 2017 rent. I note that the tenant could predict that the landlord would seek to recover the April rent now outstanding as well as the outstanding amount from March. I issue the attached monetary order for \$1900.00 in unpaid rent.

The landlord testified that he continues to hold a security deposit of \$487.00 paid by the tenant December 12, 2016. Subject to section 72 of the Act, I will allow the landlord to retain the tenant's security deposit *plus any interest* in partial satisfaction of the monetary award. [There is no interest payable for this period.]

### Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to 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.

I issue a monetary Order in favour of the landlord as follows:

Rental Arrears for March 2017	\$925.00
Rental Arrears for April 2017	975.00
Less Security Deposit	-487.00
<b>Total Monetary Award</b>	<b>\$1413.00</b>

The landlord is provided with formal Orders in the above terms. Should the tenant(s) 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 25, 2017

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Residential Tenancy Branch