



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

Two agents for the landlord (the "agents") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally. 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 Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agents testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on May 5, 2017. A copy of the registered mail tracking number receipt was submitted in evidence and the tracking number has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website information the tenant signed for and accepted the registered mail package on May 20, 2017. Based on the above, I find the tenant was served with the Notice of Hearing, Application and documentary evidence on May 20, 2017 which is the actual date the tenant signed for and accepted the registered mail package. As the tenant did not attend the hearing, I find that this Application is undisputed and unopposed by the tenant.

### Preliminary and Procedural Matters

Firstly, the agents requested to change the agent's name as landlord to the corporate landlord same which was permitted in accordance with section 64(3) of the *Act*.

Secondly, the agents requested to increase their monetary claim from the original amount of \$1,450.60 to also include loss of rent for May 2017 of \$702.80 plus a late fee for May 2017. The agents were advised that while May 2017 loss of rent could be added, the late fee could not as the tenancy would have ended by then based on the undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 3, 2017 (the "10 Day Notice"). As a result, the agents were permitted to add \$702.80 for loss of May 2017 rent as I find the tenant would know or out to have known that by continuing to occupy the rental unit that loss of rent would be suffered by the landlord. This amendment was permitted pursuant to section 64(3) of the *Act*.

Thirdly, the agents requested to retain the tenant's security deposit verbally during the hearing and as a result and pursuant to sections 67 and 72 of the *Act*, if the landlord is entitled to a monetary claim, I will offset any amount with the tenant's security deposit plus any applicable interest under the *Act*.

#### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on March 1, 2004. Monthly rent in the amount of \$510.00 was due on the first day of each month and increased through rent increases during the tenancy to the current amount of \$702.80. The tenant paid a security deposit of \$255.00 at the start of the tenancy which the landlord continues to hold.

The agents confirmed service of the 10 Day Notice by posting to the tenant's door on April 3, 2017. The 10 Day Notice included an effective vacancy date of April 17, 2017 and indicated that \$1,405.60 was owed as of April 1, 2017. The tenant did not dispute the 10 Day Notice and did not pay any of the amount owing within five days of receiving the 10 Day Notice.

The agents confirmed that the tenant continues to occupy the rental unit and that they are seeking an order of possession as and a monetary order for unpaid rent for March and April of 2017 and loss of rent for May 2017 of \$702.80 for each month. In addition, and as per clause 10 of the tenancy agreement, the agents stated that they are seeking a late fee for March and April of 2017 of \$25.00 for each month. The agents were advised that the late fee for May 2017 would not be applicable as the effective vacancy date was April 17, 2017.

### Analysis

Based on the undisputed documentary evidence and testimony provided by the agents during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice is listed as April 17, 2017. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was April 17, 2017. The tenant continues to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

**Claim for unpaid rent and loss of rent** –The agents testified that \$2,108.40 in rent arrears and loss of rent is owed by the tenant as of the date of the hearing. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$2,108.40** comprised of rent arrears and loss of rent.

**Late fees** – Section 10 of the tenancy agreement clearly indicates that late rent payments will be assessed a charge of \$25.00 which is permitted under the *Act*. As a result, I find the tenant is responsible for paying the **\$50.00** for the late fees comprised of \$25.00 for March 2017 and \$25.00 for April 2017. As the tenancy ended on April 17, 2017 I do not grant a late fee for May 2017.

The landlord is holding the tenant's security deposit of \$255.00 which was paid by the tenant at the start of the tenancy and has accrued \$9.03 in interest. As a result, I find the landlord is holding a total security deposit including interest of \$264.03.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

**Monetary Order** – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus interest as follows:

Rent arrears and loss of owed by tenant (March, April and May 2017 @ \$702.80 X 3 months)	\$2,108.40
Late fees (2 X \$25.00 for the months of March and April 2017)	\$50.00
Filing fee	\$100.00
<b>Subtotal</b>	<b>\$2,258.40</b>
<i>(Less tenant's security deposit including interest)</i>	<i>-\$264.03</i>
<b>TOTAL BALANCE OWING BY TENANT TO LANDLORD</b>	<b>\$1,994.37</b>

Given the above, and pursuant to sections 67 and 72 of the *Act*, I authorize the landlord to retain the tenant's full security deposit including interest which totals \$264.03 from the \$2,258.40 owing to the landlord and I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$1,994.37**.

### Conclusion

The landlord's application has merit.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$2,258.40 as indicated above. The landlord is authorized to retain the tenant's full security deposit including interest which totals \$264.03 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$1,994.37. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: May 24, 2017

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Residential Tenancy Branch