



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LIVE HOLDING OF CANADA INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The female Agent for Landlord stated that on April 13, 2017 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenant. The Tenant acknowledged receipt of these documents.

The female Agent for the Landlord stated that no evidence was submitted to the Residential Tenancy Branch for these proceedings.

The Tenant stated that no evidence was submitted to the Residential Tenancy Branch for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

### Preliminary Matter #1

The Tenant and the Occupant had significant difficulty participating in these proceedings due to a language barrier, although I believe I was able to adequately understand their testimony.

### Preliminary Matter #2

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from May of 2017. I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due,

including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent and/or late fees?

### Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on July 01, 2016;
- the Tenant agreed to pay monthly rent of \$1,495.00 by the first day of each month;
- the Tenant paid a security deposit of \$1,495.00, which included a deposit for utilities;
- the Tenant has not paid rent for any period after September 30, 2016; and
- the Tenant is still occupying the rental unit.

The Landlord contends that they met with the Tenants on several occasions in an effort to collect the rent, but the rent remains unpaid.

The Tenant contends that the Landlord only attempted to collect the rent after October 01, 2016 on one occasion, which was sometime in February of 2017. The Tenant stated that rent was not paid in February of 2017 because the Landlord refused to accept it.

The male Agent for the Landlord stated that a 10 Day Notice to End Tenancy for Unpaid Rent was personally served to the Tenant on April 13, 2017. The Tenant stated that a 10 Day Notice to End Tenancy was not personally served to her on April 13, 2017. The Occupant stated that a 10 Day Notice to End Tenancy was personally served to him on April 13, 2017.

The Landlord applied for late fees, in an undisclosed amount. The female Agent for the Landlord stated that there is a term in the tenancy agreement that requires the Tenant to pay a late fee of \$5.00 per day if the rent is not paid by the 5<sup>th</sup> day of the month and that the late fee increases to \$10.00 per day if rent is not paid by the 20<sup>th</sup> day of the month.

### Analysis

On the basis of the undisputed evidence I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,495.00 by the first day of each month and that the Tenant has not paid rent for any period after September 30, 2016.

Section 26(1) of the *Act* requires tenants to pay rent when it is due. Regardless of why the Tenant has previously failed to pay rent, I find that the Tenant must pay all rent that is now currently due. On the basis of the undisputed evidence I find that the Tenant has not paid rent for the period between October 01, 2016 and May 31, 2017. I therefore find that the Tenant owes the Landlord \$11,960.00 in rent.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing notice to end the tenancy that complies with section 52 of the *Act*. As the Landlord has not submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent, I am unable to conclude that the Notice to End Tenancy that was served on April 13, 2017 complies with section 52 of the *Act*. As I am unable to conclude that the Notice to End Tenancy complies with section 52 of the *Act*, I dismiss the application for an Order of Possession.

Section 7(1)(d) of the *Residential Tenancy Branch Regulation* stipulates that a landlord can charge a fee of no more than \$25.00 for a late rent payment. Section 7(2) of the *Regulation* stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

As the tenancy agreement provides for a late fee that is significantly greater than the amount authorized by the *Regulation* I find that the term of the tenancy agreement regarding late fees is not enforceable. To be enforceable the tenancy agreement must stipulate that the later payment fee will be \$25.00 or less. As the term in the tenancy agreement regarding late fees is not enforceable, I dismiss the claim for late fees.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

The application for an Order of Possession has been dismissed. This tenancy will therefore continue until it is ended in accordance with the *Act*.

The Landlord has established a monetary claim, in the amount of \$12,960.00, which includes \$11,960.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$1,495.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$11,465.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: May 31, 2017

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Residential Tenancy Branch