



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes: OPR, MNR, MNSC

### Introduction:

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with the landlord’s application based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 17, 2017 (the “10 Day Notice”). The landlord applied for an order of possession for unpaid rent and a monetary order for unpaid rent and authorization to retain the tenant’s security deposit.

The tenant did not attend the hearing. The individual landlord attended and was given a full opportunity to be heard, to present documentary evidence and to make submissions.

As the tenant did not attend the hearing, service of the landlord’s application and the notice of hearing were considered. The landlord provided affirmed testimony that he served the tenant personally with these materials on April 10, 2017. Although he had not submitted it in evidence, he said that he had a copy of the notice of hearing that had been signed by the tenant on April 10, 2017. I accept that the tenant has been served in accordance with the Act.

The landlord amended his application during the hearing to add a claim for outstanding April and May rent and I accepted the amendment. Rule 4.2 of the Rules of Procedure allows for amendments at the time of hearing with respect to matters that can reasonably be anticipated, such this.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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

Is the landlord entitled to retain the security deposit?

### Background and Evidence

According to the written tenancy agreement in evidence and the landlord's affirmed and undisputed evidence, this tenancy began on October 1, 2012 with a prior owner of the rental unit. It is currently a month to month tenancy with rent of \$875.00 payable on the first day of each month. A security deposit of \$437.50 was paid at the beginning of the tenancy and the current landlord now holds that amount.

The landlord testified that the tenant has not paid the rent for six months. He further testified that he personally served the tenant with the 10 Day Notice on March 17, 2017, at which point four months of rent, for a total of \$3,500.00, was outstanding. A Proof of Service document signed by the tenant and a witness tenant was included in the landlord's evidence. The landlord also said that the tenant has not paid April or May's rent. The tenant remains in the rental unit. The tenant has not filed an application to dispute the 10 Day Notice.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. Based on the landlord's undisputed testimony and the Proof of Service document in evidence, I find that the tenant was served with the 10 Day Notice on March 17, 2017. I further find that she did not file an application to dispute the 10 Day Notice or pay the overdue rent.

Section 46(5) of the Act provides that if a tenant does not pay the amount outstanding or apply to dispute a 10 Day Notice within five days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

In accordance with section 46(5) of the Act, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on March 27, 2017, the effective date on the 10 Day Notice. The tenant and anyone on the premises were required to vacate the premises by that date.

As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the Act. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

Sections 7 and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The landlord provided undisputed evidence that the tenant owes \$5,250.00 in unpaid rent and I award the landlord this amount.

As the landlord was successful in this application, I find that the landlord is also entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$437.50. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I authorize and order the landlord to retain the tenant's security deposit of \$437.50 in partial satisfaction of the monetary claim.

### Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order for the landlord in the following terms, which allows the landlord to obtain a monetary award for unpaid rent and the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid rent	\$5,250.00
Filing fee	\$100.00
Less security deposit	-\$437.50
<b>Total Monetary Order</b>	<b>\$4,912.50</b>

I issue a monetary order in the landlord's favour in the amount of **\$4,912.50** against the tenant. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it 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*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: May 12, 2017

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Residential Tenancy Branch