



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LEWIS APTS.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR ET FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, dated May 10, 2017 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- an order to end the tenancy early and obtain an order of possession; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by P.B., who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, P.B. testified that service of the Application package, which included the Notice of a Dispute Resolution Hearing and the documentary evidence, was attempted on several occasions on May 10 and 11, 2017. The Tenant is the only occupant of the rental unit. The Landlord's agents, P.B. and F.B., heard noises in the rental unit and believed the Tenant was trying to avoid service. Accordingly, on May 11, 2017, P.B. placed a copy of the Application package under the Tenant's door. Pursuant to section 71 of the *Act*, I find the Landlord's Application package was sufficiently served for the purpose of the *Act* on May 11, 2017.

On behalf of the Landlord, P.B. was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order ending the tenancy early?
4. Is the Landlord entitled to an order granting recovery of the filing fee

### Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirms the month-to-month tenancy began on July 10, 2016. Rent in the amount of \$675.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$337.50, which the Landlord holds.

On behalf of the Landlord, P.B. testified that, as of April 1, 2017, \$2,584.84 was outstanding. The Tenant made a partial payment of \$550.00 on April 8, 2017, but \$2,034.84 remained owing. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 11, 2017 (the "10 Day Notice"). According to P.B., the 10 Day Notice was served on the Tenant by posting a copy to the Tenant's door on April 11, 2017. The Tenant subsequently made partial payments of \$345.00 on April 28, 2017, and \$500.00 on May 5, 2017. The Tenant did not pay rent when due on May 1 or June 1, 2017, but again made partial payments of \$500.00 on June 5, 2017, and \$500.00 on June 15, 2017. Currently, \$1,539.84 remains outstanding.

The Landlord also sought an order granting recovery of the filing fee, and requested that he be permitted to apply the security and pet damage deposits in partial satisfaction of any monetary order I make.

The Tenant did not attend the hearing to dispute the amounts claimed by the Landlord.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by

issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days to either pay rent or file an application for dispute resolution. When a tenant does not pay rent or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, the Landlord testified, and I find, that the Tenant did not pay rent when due. The Landlord testified, and I find, that the Landlord served the Tenant with the 10 Day Notice by posting a copy to the Tenant's door on April 11, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on April 14, 2017. Having received the 10 Day Notice on that date, the Tenant had until April 19, 2017, to pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. The Tenant did neither. As a result, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

The Landlord testified that rent in the amount of \$1,539.84 remains outstanding. The Tenant did not attend the hearing to dispute this amount. Accordingly, I find the Landlord is entitled to a monetary award of \$1,539.84 for unpaid rent.

Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make this Application. The Landlord also requested to apply the security deposit in partial satisfaction of my monetary order, which I allow, pursuant to section 72 of the *Act*.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,302.34, which has been calculated as follows:

<b>Item</b>	<b>Amount</b>
Outstanding rent:	\$1,539.84
Filing fee:	\$100.00
<i>LESS</i> security deposit	(\$337.50)
<b>TOTAL:</b>	<b>\$1,302.34</b>

### Conclusion

The Landlords are granted an order of possession, which will be effective two (2) days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,302.34. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: June 19, 2017

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Residential Tenancy Branch