



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or part of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord MB (the "landlord") primarily spoke for both co-landlords.

The landlord testified that she served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "10 Day Notice") on the tenant on February 10, 2017 by leaving a copy in the tenant's mailbox. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 10 Day Notice on February 13, 2017, three days after placing it in the mail box.

The landlord testified that she served the landlords' application for dispute resolution dated May 9, 2017 on the tenant on May 11, 2017 by registered mail. The landlord provided a Canada Post tracking number as evidence of service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on May 16, 2017, five days after its mailing.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to monetary compensation for unpaid rent as claimed?

Are the landlords entitled to retain all or a portion of the tenant's security deposit?  
Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord provided undisputed sworn testimony regarding the following facts. This month to month tenancy began in December, 2016. The rent is \$850.00 payable on the first of the month. A security deposit of \$250.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. The tenant continues to reside in the rental unit as of the date of the hearing.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$1,750.00, the amount initially sought in the 10 Day Notice. The landlord testified that the tenant has not made any rent payment since the 10 Day Notice was issued. The landlord testified that the rental arrear as of the date of the hearing is \$5,150.00.

### Analysis

The landlords provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$850.00. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, February 23, 2017. Therefore, I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlords' undisputed evidence that the total amount of arrears for this tenancy is \$5,150.00. I issue a monetary award for unpaid rent owing of \$5,150.00 as at June 20, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenant's \$250.00 security deposit in partial satisfaction of the monetary award issued in the landlords' favour.

As the landlords' application was successful, the landlords are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

### Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlords' favour in the amount of \$5,000.00 under the following terms, which allows the landlords to recover unpaid rent and the filing fee for their application, and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent December	\$50.00
Unpaid Rent January	\$850.00
Unpaid Rent February	\$850.00
Unpaid Rent March	\$850.00
Unpaid Rent April	\$850.00
Unpaid Rent May	\$850.00
Unpaid Rent June	\$850.00
Filing Fee Recovery	\$100.00
Less Security Deposit	-\$250.00
<b>Total Monetary Order</b>	<b>\$5,000.00</b>

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order 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*.

Dated: June 20, 2017

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Residential Tenancy Branch