



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, OPR

### Introduction

This participatory hearing was convened after the issuance of a May 13, 2017 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's – Direct Request Proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent.

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

The landlord attended the hearing, while the tenant did not. The landlord was joined by his employer, K.D., as it was explained to the hearing that the landlord had some difficulty understanding certain questions, since English was not his first language. Both the landlord and K.D. were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was posted on the tenant's rental unit door on May 16, 2017. Pursuant to sections 88 and 90 of the *Act*, I find that the tenant to be deemed served with this 10 Day Notice on May 19, 2017.

On May 31, 2017, the landlord posted a Notice of Hearing on the tenant's rental unit door. Pursuant to sections 89 and 90 of the *Act*, the tenant is deemed served on June 2, 2017 with the Notice of Hearing on June 2, 2017.

At the outset of the hearing the landlord asked to amend his application to reflect unpaid rent of \$1,500.00 for June 2017. As the tenant continues to occupy the rental unit, I will amend the landlord's application under the powers delegated to me by section 64 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

#### Background and Evidence

The tenancy in question began on April 1, 2017. This was a fixed-term tenancy that was scheduled to end on April 30, 2017. Rent was \$1,500.00 per month and no security deposit was collected by the landlord.

The landlord gave testimony that his application for Direct Request was reconvened to a participatory hearing because an Adjudicator found that, “there is no signature of a witness to confirm service of the 10 Day Notice to the tenant and, the address of the tenant’s rental unit does not appear on the residential tenancy agreement submitted by the landlord. I find that this discrepancy in the address of the tenant’s rental unit raises a question that can only be addressed through a participatory hearing”

The landlord explained that he had only recently become a landlord and was unaware of the provisions concerning Proof of Service. The landlord continued by stating that the discrepancy between the address listed on the tenant’s rental agreement was again an oversight on his part. He stated that the tenancy agreement correctly lists the property’s address but fails to note that the fixed-term agreement applies to the basement.

The landlord has applied for an Order of Possession and an amended Monetary Order reflecting partially unpaid rent for May 2017 and total unpaid rent for April 2017. The landlord testified that the tenant continues to occupy the rental unit.

#### Analysis

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant’s failure to take either of these actions within five days has led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 29, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove his entitlement to his claim for a monetary award.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a Monetary Order of \$2,100.00 for unpaid rent. The landlord testified that rent has not been paid in full for May 2017, and remains completely unpaid for June 2017.

#### Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I make a Monetary Order of \$2,100.00 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for May 2017	\$600.00
Unpaid Rent for June 2017	1,500.00
<b>Total Monetary Order</b>	<b>\$2,100.00</b>

The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 22, 2017

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Residential Tenancy Branch