



# 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 landlord's 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.

Both parties attended the hearing and were given an opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant DR (the "tenant") confirmed she represented both co-tenants.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 10 Day Notice, the landlord's application for dispute resolution and evidentiary materials. The tenant confirmed receipt of the landlord's materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with copies of the landlord's 10 Day Notice, the landlord's application and evidence.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenants have failed to pay the rent amount for additional months and that the total arrears including rent owing and fees as of the date of the hearing is \$2,463.42. The landlord also testified that she will not be able to find a new occupant for the rental unit for the month of July and is seeking damages in the amount of \$1,300.00 for loss of rental revenue for July, 2017. Pursuant to section 64(3)(c) of

the *Act* and Rule 4.2 of the Rules of Procedure, as I find that additional rent becoming due and loss of rental revenue arising from overholding could be reasonably anticipated, I amend the landlord's Application to increase the landlords' monetary claim from \$1,788.42 to \$3,763.42.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent and loss as claimed?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

The parties agreed on the following facts. This periodic tenancy began in November, 2016. The current monthly rent is \$1,300.00 payable on the first of the month. In addition the tenant is responsible for paying for pay-per-view movies she orders or additional channels she subscribes to over the cable channels included in the tenancy. A security deposit of \$500.00 and a pet damage deposit of \$250.00 were paid at the start of the tenancy and are still held by the landlord. The tenants continue to reside in the rental unit at the time of the hearing.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$3,114.00, the amount initially sought in the 10 Day Notice. The parties testified that the tenants made a payment of \$625.00 on May 25, 2017 and the landlord informed the tenants that payment was being accepted for use and occupancy only and did not reinstate the tenancy. The landlord said that the arrears, including the unpaid rent and the utility services the tenants ordered, is \$2,463.42 as of June 26, 2017, the date of the hearing. The landlord said that she does not expect to be able to rent the unit to a new tenant for July, 2017 and is seeking a monetary award of \$1,300.00 for rental revenue loss for July.

The tenant testified that she agrees that there is a rental arrear but is confused as to the total amount owing. She believes that the arrears should be about \$1,500.00 by her calculation. The tenant testified that she attempted to file an application to dispute the

landlord's 10 Day Notice but was given confusing instructions and was not able to complete it.

### Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent and utilities or file an application for dispute resolution within five days of receiving a 10 Day Notice. I accept the evidence of the parties that the tenants failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act*, nor did the tenants dispute the 10 Day Notice within that 5 day period by filing an application for dispute resolution. I accept the parties' evidence that the tenant made partial payment of \$625.00 on May 25, 2017, outside of the 5 days granted under the *Act*, and the partial payment was accepted for use and occupancy only. Accordingly, I find that the tenants are 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, May 15, 2017. I find that the 10 Day notice conforms to the form and content requirement of section 52 of the *Act* as it is signed and dated by the landlord, provides the rental unit address, states the effective date of the notice, and states the grounds for ending the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the evidence of the landlord that the total amount of arrear for this tenancy is \$2,463.42. I issue a monetary award for that amount as at June 26, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

I accept the landlord's evidence that she will not be able to find a new occupant for the month of July until the tenant vacates the rental unit. Accordingly, I issue a monetary award for \$1,300.00 the equivalent of one month's rent to the landlord.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$500.00 security deposit and \$250.00 pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was successful, the landlord is 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 landlord effective **2 days after service on the tenant**. Should the tenants 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 landlord's favour under the following terms:

Total Rental Arrears for Tenancy	\$2,463.42
Loss of Rental Revenue July, 2017	\$1,300.00
Filing Fee	\$100.00
Less Security Deposit and Pet Damage Deposit	-\$750.00
<b>Total Monetary Award</b>	<b>\$3,113.42</b>

The tenants 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 26, 2017

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Residential Tenancy Branch