



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF, CNR, MNDC, RP, AS, RR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied 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 a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants' applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord provided undisputed affirmed testimony that the tenant was served initially through regular Canada Post Mail, then email by the landlord and

subsequently in person on June 15, 2017 by the landlord's agent with the entire package (including amendment and documentary evidence). The landlord confirmed that she had accepted service of the tenant's notice of hearing package via email and was fully aware of the tenant's application for dispute.

I accept the undisputed affirmed evidence of the landlord and find that the tenant was sufficiently served as per section 90 of the Act.

As for the tenant's application for dispute,

This matter was set for a conference call hearing at 9:00 a.m. on this date. The tenant did not attend. The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The landlords confirmed that they were served with the tenant's application for dispute and that they were aware of the listed issue(s).

I waited until 14 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing.

Rule 7 of the Rules of Procedure provides that:

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.2 Delay in the start of a hearing**

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

**7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenant and in the absence of the tenant's participation in this hearing, I order the tenant's application

dismissed without leave to reapply. I make no findings on the merits of the matter. The hearing proceed on the landlord's application.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on January 1, 2017 on a fixed term tenancy ending on June 30, 2017 as shown by the submitted copy of the signed tenancy agreement dated December 29, 2016. The monthly rent is \$1,250.00 payable on the 1<sup>st</sup> day of each month.

The landlord provided undisputed affirmed testimony that an agreement was made between both parties that the tenant provided services of painting the rental unit in lieu of \$200.00 applied against the security deposit. The landlord stated that no further payments were made against the agreed \$625.00 security deposit.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$2,500.00 which consists of:

\$1,250.00	Unpaid Rent, June 2017
\$1,250.00	Unpaid Rent, July 2017

The landlord provided undisputed affirmed testimony that the tenant was served with the 10 Day Notice dated June 2, 2017 which states in part that the tenant failed to pay rent of \$1,250.00 that was due on June 1, 2017. The 10 Day Notice also sets out an effective end of tenancy date of June 8, 2017.

The landlord stated that the tenant still occupies the rental unit as of the date of this hearing and provided undisputed affirmed testimony that no rent payments have been made since the 10 Day Notice was served to the tenant in person with a witness on

June 2, 2017. The landlord has also submitted a copy of a completed proof of service document confirming service in this manner.

In support of this application the landlord has provided:

A copy of 10 Day Notice dated June 2, 2017

A copy of Proof of Service, Notice to End Tenancy dated June 2, 2107

A copy of signed and dated Residential Tenancy Agreement

A copy of an incomplete condition inspection report

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served with the 10 Day Notice in person on June 2, 2017 as shown by the submitted copy of the proof of service document.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice as the tenant's application was dismissed without leave. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of the tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by June 8, 2017. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

As for the landlord's monetary claim, I accept the undisputed affirmed evidence of the landlord and find that the tenant has failed to pay any rent since the 10 Day Notice dated June 2, 2017 was served. I find that the landlord has established a claim for unpaid rent of \$2,500.00 as claimed.

I also accept the landlord's undisputed affirmed evidence that only \$200.00 of the \$625.00 security deposit was paid via the service in lieu of payment agreement made between the two parties for \$200.00 for painting service by the tenant. I authorize the landlord to retain the \$200.00 in partial satisfaction of the claim.

As the landlord has been successful in the application for dispute, I find that the landlord is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is granted an order of possession for unpaid rent.

The landlord is granted a monetary order for \$2,400.00.

The tenant must be served with these orders. Should the tenant fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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: July 27, 2017

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Residential Tenancy Branch