



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR OPR CNC

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt applications from both parties:

The corporate landlord applied for:

- an Order of Possession pursuant to section 46 of the *Act*; and
- a monetary order for unpaid rent pursuant to section 67 of the *Act*.

The tenant applied for:

- a cancellation of the landlord's 10 Day Notice for unpaid rent issued under section 46 of the *Act*.

Only agent for the landlord, J.H. (the "landlord") appeared at the hearing. The landlord was given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord said that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was given to the tenant in person on June 8, 2017. Pursuant to sections 88 & 90 of the *Act* the tenant is deemed served with the 10 Day Notice on the same day as its service, June 8, 2017.

Undisputed testimony was provided to the hearing by the landlord that the Landlord's Application for Dispute Resolution and her evidentiary package were sent to the tenant by way of Canada Post Registered Mail on June 21, 2017. A copy of the Canada Post tracking number was provided to the hearing. Pursuant to sections 88, 89 & 90 of the *Act* the tenant is deemed served with these documents on June 26, 2017, five days after their mailing.

The landlord acknowledged receiving the tenant's application for dispute resolution and is therefore found to have been served with the tenant's application.

On August 8, 2017 an amendment to the landlord's application was received by the *Residential Tenancy Branch*. This amendment dated August 2, 2017 sought to change the landlord's monetary order to \$6,336.00 in reflection of unpaid rent for unpaid rent for May, June, July and August 2017. *Residential Tenancy Rule of Procedure 4.2* notes, "In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing." Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to reflect unpaid rent for the time periods listed.

#### Issue(s) to be Decided

Can the tenant cancel the landlord's application for an Order of Possession?

Is the landlord entitled to a Monetary Order for Unpaid Rent?

Can the landlord recover the filing fee?

#### Background and Evidence

The landlord explained that the tenancy began on September 1, 2011. Rent began at \$1,550.00 and rose to its current level of \$1,584.00. Security and Pet deposits of \$775.00 each collected at the outset of the tenancy continue to be held by the landlord.

The landlord explained that she is seeking an Order of Possession and a Monetary Order of \$6,336.00 due to unpaid rent for the months of May, June, July and August 2017.

#### Analysis

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. While the tenant has made an application made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice, the tenant has failed to attend the hearing to present any evidence concerning his application to cancel the landlord's 10 Day Notice.

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Based on the 10 Day Notice entered into written evidence and the landlord's sworn testimony describing the document served on the tenant, I find that the landlord's 10 Day Notice complies with section 52 of the *Act* and that no evidence was presented by the tenant as to why the 10 Day Notice should be dismissed. I therefore 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. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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 entitlement to a claim for a monetary award.

The landlord explained that the tenant had not paid rent for May, June, July and August 2017. In addition, the tenant continues to occupy the rental unit.

The tenant failed to attend the hearing, and no evidence was submitted by the tenant explaining why rent remained unpaid. I find that the landlord has suffered a loss of rent under this tenancy and pursuant to section 67 of the *Act* I find that the landlord is entitled to receive a monetary award for this unpaid rent.

Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the both the tenant's pet and security deposits in partial satisfaction of the monetary award.

Conclusion

I make a Monetary Order of \$4,786.00 in favour of the landlord as follows:

Item	Amount
Unpaid rent for May 2017	\$1,584.00
Unpaid rent for June 2017	1,584.00
Unpaid rent for July 2017	1,584.00
Unpaid rent for August 2017	1,584.00
Less Security and Pet Deposits (2 x \$775.00)	(-1,550.00)
Total =	\$4,786.00

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.

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. Should the tenant fail to comply with this Order, this Order may be enforced as an Order of the Supreme 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: August 15, 2017

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Residential Tenancy Branch