



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF MNR O OPR

### Introduction

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

- a Monetary Order for unpaid rent pursuant section 67 of the *Act*;
- an Order of Possession for unpaid rent pursuant to section 55 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*; and
- other unspecified relief.

Only the landlord attended the hearing. The landlord, represented by agent K.S., was given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord provided undisputed 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 June 5, 2017. A copy of the Proof of Service document was submitted at the hearing as part of the landlord's application and evidentiary package. Pursuant to sections 88 & 90 of the *Act*, the tenant is found to have been served with the 10 Day Notice on June 8, 2017.

The landlord said that the Landlord's Application for Dispute Resolution (Landlord's Application) and evidentiary package was hand delivered to the tenant with witness S.R. present on June 21, 2017. Pursuant to sections 88, 89 & 90 of the *Act*, the tenant is deemed to have been served with these documents on June 21, 2017.

### 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?

Can the landlord recover the filing fee for this application?

### Background and Evidence

Undisputed testimony provided during the hearing by the landlord explained that the tenancy in question began on August 1, 2009. Rent was \$1,304.00 per month and a security deposit of \$570.00 collected at the outset of the tenancy continues to be held by the landlord. The landlord explained that rent had recently been increased to \$1,352.00 per month.

The landlord stated that the tenant has failed to pay rent for March, April, May and June 2017. In addition, the landlord was charged \$75.00 in banking fees for the returned rent cheques associated with the unpaid rent for March, April and May 2017.

The landlord is seeking a Monetary Order of \$5,291.00 to recover monies owed for non-payment of rent for the months listed above and for the returned cheque fees.

### 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 the tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by June 18, 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. 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 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. 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.

The landlord provided undisputed oral testimony and written evidence to the hearing, demonstrating that rent was not paid for March, April, May and June 2017, and that the landlord incurred banking fees of \$75.00 for the returned rent cheques related to the unpaid rent for March, April and May 2017. As part of the landlord's evidentiary package, detailed ledgers recording the non-payment of rent for this period were supplied to the hearing.

As the landlord was successful in her application, she may pursuant to section 72 of the *Act* recover the \$100.00 filing fee. Using the offsetting provision also contained in section 72, the landlord may retain the tenant's security deposit against the Monetary Order given.

### Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. 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 make a Monetary Order of \$4,821.00 in favour of the landlord as follows:

Item	Amount
Unpaid rent for March 2017	\$1,304.00
Unpaid rent for April 2017	1,304.00
Unpaid rent for May 2017	1,304.00
Unpaid rent for June 2017	1,304.00
Bank Fees	75.00
Return of Filing Fee	100.00
Less Security Deposit	(-570.00)
<b>Total =</b>	<b>\$4,821.00</b>

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: August 22, 2017

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Residential Tenancy Branch