



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR MNR MNSD MNDC FF CNR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.
- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The tenant confirmed receipt of the landlord’s application for dispute resolution hearing package (“Application”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the application and evidence. The landlord confirmed receipt of the tenant’s application for dispute resolution filed June 7, 2017. In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant’s application filed on June 7, 2017.

The tenant confirmed receipt of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 6, 2017, with an effective date of June 15, 2017.

Accordingly, I find that the 10 Day Notice was served to the tenant in accordance with section 88 of the *Act*.

Both parties also confirmed that a security deposit was never paid for this tenancy. As no security deposit was ever paid by the tenant, the landlord's application for the retention of the security deposit was withdrawn

### **Preliminary Issue - Service of the Tenant's Application for Dispute Resolution**

The tenants filed a second application on June 22, 2017, which was served to the landlord by placing it in the mailbox located at the tenant's home.

Section 89 of the *Act* establishes the following special rules for service of documents.

#### ***Special rules for certain documents***

**89** (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

Placing the application in a mailbox does not comply with section 89 (1) of the *Act*, and as such I can only deal with the tenant's application dated June 7, 2017. I dismiss, with leave to re-apply, all aspects of the tenant's application dated June 22, 2017.

### **Issue(s) to be Decided**

Should the landlord's 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent, or damage or loss?

Are both parties entitled to recover the filing fee for their applications?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

### **Background and Evidence**

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

This month-to-month tenancy began on March 15, 2017. A security deposit was never paid for this tenancy. Monthly rent was set at \$1,450.00, payable on the first day of the month. The tenant still resides at the rental suite.

On June 6, 2017, the landlord served the tenant with a 10 Day Notice for failing to pay \$4,350.00 in outstanding rent by May 5, 2017.

The landlord testified that the tenant has not paid any rent since the beginning of this tenancy, and is seeking an Order of Possession, as well as a Monetary Order for \$6,625.00 as outlined in the table below.

<b>Item</b>	<b>Amount</b>
Unpaid Rent for March 2017 (1/2 month)	\$725.00
Unpaid Rent for April 2017	1,450.00
Unpaid Rent for May 2017	1,450.00
Unpaid Rent for June 2017	1,450.00
Unpaid Rent for July 2017	1,450.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$6,625.00</b>

The tenant testified that he sent the landlord a bank draft for the \$4,350.00 on July 23, 2017, which was sent by regular mail to the landlord's address. The landlord disputes

having received this payment from the tenant. The tenant did not dispute that he failed to pay rent for July 2017.

### **Analysis**

**Section 26** of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not dispute the fact that he had failed to pay the full rent within five days of being deemed to have received the 10 Day Notice. The tenant made an application pursuant to section 46(4) of the *Act*, within five days, and testified that he had mailed the landlord a bank draft for \$4,350.00 on July 23, 2017. The tenant did not provide any tracking information, receipts, or statements to support that any payments were made. The tenant also admitted in the hearing that he had not paid rent for July 2017.

I find that the tenant had failed to pay the outstanding rent as required by the *Act*, and I am dismissing the tenant's application to cancel the 10 Day Notice. I find that the 10 Day Notice issued by the landlord is valid, and complies with section 52 of the *Act*. I find that this tenancy ended on the corrected effective date of the 10 Day Notice, June 19, 2017.

I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. 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.

The tenant did not dispute the fact that he did not pay rent for the month of July 2017. In the absence of any receipts or documentation to support that payment was made by way of bank draft on July 23, 2017, I find that the tenant has failed to pay rent for the entire tenancy as required by section 26 of the *Act*. The tenant did not have the right under the *Act*, or an order by an Arbitrator to withhold any portion of the rent. I, therefore, grant the landlord's application for \$6,525.00 in unpaid rent. The landlord made an application for recovery of the filing fee for this application. As the landlord was

successful in their application I am allowing the landlord to recover \$100.00 for the cost of this application.

As the tenancy has come to an end, and as the tenant was not successful in his application, the remainder of the tenant's application is dismissed.

**Conclusion**

The tenant's application dated June 22, 2017 is dismissed with leave to reapply.

The landlord's application to retain the security deposit was withdrawn as no security deposit was ever paid for this tenancy.

I dismiss the tenant's entire application dated June 7, 2017. I find that the landlord's 1 Month Notice is valid and effective as of June 19, 2017. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant 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 \$6,625.00 Monetary Order in favour of the landlord which allows the landlord to recover unpaid rent, and also allows the landlord to recover the filing fee for this application. The tenant 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: August 10, 2017

---

Residential Tenancy Branch