



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### Introduction

This participatory hearing was convened after the issuance of a July 18, 2017, interim decision by an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter.

The tenant did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord G.S. (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he sent the tenant a copy of the notice of this adjourned hearing by registered mail on July 28, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the notice of this hearing on August 02, 2017, the fifth day after its registered mailing.

The landlord testified that he sent two 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices) to the tenant by way of registered mail on June 19, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. I find that the 10 Day Notices, each identifying \$1,975.00 in rent owing for this tenancy, were deemed served to the tenant on June 24, 2017, in accordance with sections 88 and 90 of the *Act*.

At the outset of the hearing the landlord acknowledged that \$1000.00 of the \$1,975.00 on each 10 Day Notice is for a separate commercial tenancy that the landlord has in place with the tenant. The landlord withdrew this portion of their monetary claim.

The landlord testified that the tenant is still in the rental unit and has not paid any rent since the 10 Day Notices were issued by the landlord. The landlord amended his application for a monetary award from \$3,950.00 to \$3,900.00 to reflect the tenant's failure to pay \$975.00 in monthly rent for the four month period from May 2017 to August 2017. I allowed this amendment to the landlord's monetary application as it is clear that the tenant would have known that rent for the rental unit had become owing since the landlord submitted his application for dispute resolution.

Issues(s) to be Decided

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

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord gave written evidence that this tenancy began on April 1, 2016, with a monthly rent of \$975.00 due on the first day of the month. The landlord testified that he continues to retain a \$487.50 security deposit in trust.

Copies of the signed 10 Day Notices, each dated June 19, 2017, with an effective date of June 30, 2017, were included in the landlord's evidence. The landlord testified that the tenant has not made any payments toward this tenancy since the 10 Day Notices were issued.

The landlord's amended application for a monetary award of \$3,900.00 is for the following items:

Item	Amount
Unpaid May 2017 Rent	\$975.00
Unpaid June 2017 Rent	975.00
Unpaid July 2017 Rent	975.00
Unpaid August 2017 Rent	975.00
<b>Amended Requested Monetary Order</b>	<b>\$3,900.00</b>

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord's undisputed testimony, I find the tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make 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 failure of the tenant to take either of these actions within five days led to the end of this tenancy on July 04, 2017, the corrected effective date on the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by July 04, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

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. 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.

Based on the undisputed written evidence and sworn testimony, I find that the landlord is entitled to a monetary award of \$3,900.00 for unpaid rent owing for this tenancy for the period from May 2017 to August 2017.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid May 2017 Rent	\$975.00
Unpaid June 2017 Rent	975.00
Unpaid July 2017 Rent	975.00
Unpaid August 2017 Rent	975.00
Less Security Deposit	-487.50
<b>Total Monetary Order</b>	<b>\$3,412.50</b>

The landlord is provided with this Order in the above terms and 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 Orders 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 18, 2017

---

Residential Tenancy Branch