



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      OPR MNR MNSD FF

### Introduction

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

- an order of possession for unpaid rent and utilities 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 the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to the service of the application for dispute resolution including any evidence on file.

### Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend her claim to include additional outstanding rent for the months of July and August 2017. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

### Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenancy for this subsidized rental unit began on December 1, 2012. The rental unit is operated by a housing society through an agreement with BC Housing. The landlord submits the subsidized rent amount increased from \$361.00/month to \$629.00/month effective March 1, 2017. Up until the date of the hearing, the tenant has continued to pay the previous amount of \$361.00. The tenant paid a security deposit of \$561.50 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on June 2, 2017 the tenant was served with the 10 Day Notice through her mailbox.

The landlord testified that the tenant did not pay the outstanding rent amount of \$629.00 due on June 1, 2017 as indicated in the 10 Day Notice within five days of service of the Notice.

The landlord's monetary claim is for outstanding rent for the difference between the claimed subsidized rent amount of \$629.00 and the \$361.00 previous amount continued to be paid by the tenant for the period of March 2017 to August 2017.

The tenant acknowledged service of the 10 Day Notice and that she did not pay the full amount of the rent arrears indicated, within five days, of receiving the Notice. The tenant did not agree with the new subsidized amount and continued to pay the previous amount of \$361.00. The tenant did not file an application to dispute the 10 Day Notice. The tenant submits she was not aware she was required to file a dispute as she submitted evidence in response to the landlord's application and continued to pay the previous subsidized rent amount.

### Analysis

I am satisfied that the tenant was deemed served with the 10 Day Notice on June 5, 2017, three days after deposit in the mailbox, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute

Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, June 15, 2017.

The 10 Day Notice clearly provides instructions to a tenant that they may be evicted if they do not respond to the Notice. The tenant is instructed to either pay the rent amount indicated in the Notice or file an application to dispute the Notice, within 5 days. If the tenant did not agree with the rent amount on the Notice, the tenant should have filed an application to dispute the Notice.

Further, the law regarding rent increases is set out in sections 41 – 43 of the Act. Section 2 of the *Residential Tenancy Regulations* (the Regulations) exempts certain tenancies from the rent increase provisions:

Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act [*assignment and subletting, rent increases*] if the rent of the units is related to the tenant's income:

- (a) the British Columbia Housing Management Commission;
- ...
- (g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:
  - (i) the government of British Columbia;
  - (ii) the British Columbia Housing Management Commission;
  - (iii) the Canada Mortgage and Housing Corporation.

I find that the rental unit is operated by a housing society through an agreement with the British Columbia Housing Management Commission and the rent of the unit is related to the tenant's income. As such, the tenant's rent contribution amount and eligibility requirements of a subsidized rental unit are not within the jurisdiction of the Act.

Section 26 of the Act requires that 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.

I find that the tenant was obligated to pay monthly rent in the amount of \$629.00 and was notified of this new amount in writing but only paid \$361.00 for the period of March

2017 to August 2017. I accept the landlord's claim for outstanding rent of \$1608.00 (\$268 x 6 months).

I find that the Notice issued on June 2, 2017 complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$1708.00.

The landlord continues to hold a security deposit of \$561.50. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1146.50.

#### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 the landlord a Monetary Order in the amount of \$1146.50. 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 31, 2017

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Residential Tenancy Branch