



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### 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 pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

An agent of the landlord, C.G., (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the Landlord's Application for Dispute Resolution (the Application) and evidentiary package were posted to the door of the rental unit on August 28, 2017. The tenant confirmed receiving these documents. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidentiary package.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the door of the rental unit on August 03, 2017. The tenant confirmed receiving the 10 Day Notice, identifying \$1,600.00 in unpaid rent. In accordance with section 88 of the *Act*, I find the tenant was duly served with the 10 Day Notice.

At the outset of the hearing the landlord testified that the tenant is still in the rental unit and has not made any payments towards the tenancy. The landlord requested to amend their application for a monetary award from \$1,650.00 to \$3,250.00, which is for August 2017 unpaid rent, September 2017 unpaid rent and \$50.00 in charges that the landlord incurred for the July 2017 and August 2017 rent cheques that had insufficient funds. Section 7(c) of the *Residential Tenancy Regulations* allows for a landlord to charge to the tenant a service fee charged by a financial institution for the return of a tenant's cheque.

The landlord's amended application for a monetary award of \$3,250.00 is for the following items:

Item	Amount
N.S.F. service fee for July 2017 cheque	\$25.00
Unpaid August 2017 Rent	1,600.00
N.S.F. service fee for August 2017 cheque	25.00
Unpaid September 2017 Rent	1,600.00
<b>Amended Requested Monetary Order</b>	<b>\$3,250.00</b>

#### 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 July 01, 2017, with a monthly rent of \$1,600.00 due on the first day of each month. The landlord testified that they continue to retain \$800.00 for the security deposit, in trust.

A copy of the signed 10 Day Notice, dated August 03, 2017, with an effective date of August 13, 2017, was included in the landlord's evidence.

The landlord testified that they are seeking to end the tenancy and will only accept rent from the tenant for use and occupancy only.

The tenant testified that they have had financial difficulties arising from their business dealings and that they will pay the rent as soon as they are able to in a couple of weeks. The tenant testified that they have not paid the rent for August 2017 and September 2017. The tenant testified that they will not be able to move out of the rental unit in 10 days.

The landlord testified that they are not interested in continuing the tenancy.

#### 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 evidence and the testimony of both parties, 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 August 16, 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 August 16, 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 landlord's evidence and the testimony of both parties, I find the landlord is entitled to a monetary award of \$3,250.00 for N.S.F. service fees charged by the landlord's financial institution for July 2017 and August 2017 rent cheques, and for unpaid rent owing for this tenancy for August 2017 and September 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, to recover financial institution service fees and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
N.S.F. service fee for July 2017 cheque	\$25.00
Unpaid August 2017 Rent	1,600.00
N.S.F. service fee for August 2017 cheque	25.00
Unpaid September 2017 rent	1,600.00
Less Security Deposit	-800.00
<b>Total Monetary Order</b>	<b>\$2,450.00</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: September 29, 2017

---

Residential Tenancy Branch