



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNDC, 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 pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. 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.

At the onset of the hearing, the landlord called their witness J.M. to testify. The witness testified that she saw the landlord's son personally hand the Landlord's Application for Dispute Resolution (the Application) and notice of this hearing to each tenant on August 19, 2017. In accordance to section 89 of the *Act*, I find that the tenants are duly served with these documents.

The landlord testified that she served the tenants the evidentiary package by leaving it on the doorstep of the rental unit with the tenants' other mail on September 05, 2017. Section 88 of the *Act* does not allow for service of documents by leaving them on the doorstep. Rule 3.14 of the Rules of Procedure (the *Rules*) establishes that all documentary evidence to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that the landlord should have served the tenants so that they would have received the evidentiary package by August 30, 2017 for a hearing on September 14, 2017. As the landlord has not served the

evidence in accordance with section 88 of the *Act* or Rule 3.14 of the *Rules*, I find that I cannot consider it.

The landlord gave undisputed sworn testimony that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was personally handed to the tenant on June 17, 2017. In accordance with section 88 of the *Act*, I find that the 10 Day Notice, identifying \$1,000.00 in rent owing for this tenancy, was duly served to the tenant. Since I find that the 10 Day Notice was served to the tenants previous to the Application being made, I will consider it.

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 tenancy. The landlord requested to amend their Application to include the monthly rent for September 2017. The landlord's amended application for a monetary award of \$4,100.00 is for the following items:

<b>Item</b>	<b>Amount</b>
Unpaid June 2017 Rent	\$1,000.00
Unpaid July 2017 Rent	1,000.00
Unpaid August 2017 Rent	1,000.00
Unpaid September 2017 Rent	1,000.00
Filing fee for this application	100.00
<b>Amended Requested Monetary Order</b>	<b>\$4,100.00</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 and for other money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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?

#### Background and Evidence

The landlord gave undisputed sworn testimony that this tenancy began on December 01, 2015, with a monthly rent of \$1,000.00, due on the first day of each month. The landlord testified that no security deposit was paid.

A copy of the signed 10 Day Notice, dated June 17, 2017, with an effective date of June 30, 2017, was included in the landlord's evidence.

### 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 evidence and sworn testimony, I find the tenants 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 tenants to take either of these actions within five days led to the end of this tenancy on June 30, 2017, the effective date on the 10 Day Notice. In this case, the tenants and anyone on the premises were required to vacate the premises by June 30, 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 undisputed written evidence and sworn testimony, I find the landlord is entitled to a monetary award of \$4,000.00 for unpaid rent owing for this tenancy for the period from July 2017 to September 2017.

As the landlord has testified that no security deposit was paid, the portion of the landlord's Application to retain the security deposit is dismissed, without leave to reapply.

As the landlord has been successful in this application, I also allow them to recover their \$100.00 filing fee from the tenant.

### Conclusion

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

<b>Item</b>	<b>Amount</b>
Unpaid June 2017 Rent	\$1,000.00
Unpaid July 2017 Rent	1,000.00
Unpaid August 2017 Rent	1,000.00
Unpaid September 2017 Rent	1,000.00
Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$4,100.00</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 18, 2017

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Residential Tenancy Branch