



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes OPR MNR MNDC MNSD FF CNR DRI

### 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:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent and loss 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 pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- an order regarding a disputed additional rent increase pursuant to section 43;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

### Issues

Is the landlord entitled to an order of possession for unpaid rent?

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

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 tenants?

### Background and Evidence

The tenancy began in July 2015 with a monthly rent of \$850.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$425.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified the tenant failed to pay the \$850.00 rent payable on July 1, 2017. The landlord testified that on July 4, 2017 he personally served the tenant with the 10 Day Notice.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice.

The tenant acknowledged service of the 10 Day Notice and that she did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenant testified that she was not able to pay the rent as her wallet was stolen. The tenant testified that she paid the outstanding rent 14 days after receiving the 10 Day Notice.

The landlord acknowledged that all outstanding rent has been since paid up to date so he withdrew his application for a monetary compensation for unpaid rent and loss.

The Notice of Rent Increase was served to the tenant prior to the service of the 10 Day Notice and has an effective date of October 1, 2017.

### Analysis

I am satisfied that the tenant was personally served with the 10 Day Notice on July 4, 2017 pursuant to section 88 of the Act.

Section 46 of the Act requires that upon receipt of a 10 Day Notice 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.

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.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenant acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenant **have a right under this Act** to deduct all or a portion of the rent. Theft of a wallet is not a circumstance under the Act which permits the deduction or withholding of rent. An Arbitrator does not have the jurisdiction to extend the time within which a tenant must pay overdue rent.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is

upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord 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 monetary award of **\$100.00**.

The landlord continues to hold a security deposit of \$425.00. I allow the landlord to retain \$100.00 from the security deposit in full satisfaction of the monetary award pursuant to section 38 of the *Act*.

As this tenancy has ended pursuant to a 10 Day Notice, the tenant's application to dispute the Notice of Rent Increase is a moot point and I make no finding on the matter.

#### 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.

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 15, 2017

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Residential Tenancy Branch