



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR 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 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:13 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. An agent of the landlord, K.F., (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 the Landlord's Application for Dispute Resolution (the Application) and evidentiary package was sent to the tenant by way of registered mail on August 22, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application and evidentiary package on August 27, 2017, the fifth day after its registered mailing.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was sent by registered mail to the tenant on July 07, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice, identifying \$1,392.00 in rent owing for this tenancy, was deemed served to the tenant on July 12, 2017.

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 for a monetary award from \$1,839.00, to \$2,186.00, to reflect the tenant's failure to pay \$347.00 in monthly rent for September 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.

The landlord's amended application for a monetary award of \$2,186.00 is for the following items:

<b>Item</b>	<b>Amount</b>
Unpaid March 2017 Rent	\$4.00
Unpaid April 2017 Rent	347.00
Unpaid May 2017 Rent	347.00
Unpaid June 2017 Rent	347.00
Unpaid July 2017 Rent	347.00
Unpaid August 2017 Rent	347.00
Unpaid September 2017 Rent	347.00
Filing fee for this application	100.00
<b>Amended Requested Monetary Order</b>	<b>\$2,186.00</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?

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 April 01, 2013, with a monthly rent of \$347.00 that is due on the first day of each month. The landlord testified that no security deposit was paid by the tenant.

A copy of the signed 10 Day Notice, dated July 07, 2017, with an effective date of July 22, 2017, was included in the landlord's evidence.

A copy of a tenant ledger showing the rent owing and paid during this tenancy was also 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 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 22, 2017, the 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 22, 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 \$2,086.00 for unpaid rent owing for this tenancy for the period from March 2017 to September 2017.

As the landlord has been successful in this application, I 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 tenant or any occupant 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 recover the filing fee from the tenant:

<b>Item</b>	<b>Amount</b>
Unpaid March 2017 Rent	\$4.00
Unpaid April 2017 Rent	347.00
Unpaid May 2017 Rent	347.00
Unpaid June 2017 Rent	347.00
Unpaid July 2017 Rent	347.00
Unpaid August 2017 Rent	347.00
Unpaid September 2017 Rent	347.00
Filing Fee for this application	100.00
<b>Total Monetary Order</b>	<b>\$2,186.00</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 19, 2017

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Residential Tenancy Branch