



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OPR MNR CNR MNSD

### 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 pursuant to section 67;

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;

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.

### 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 outstanding rent in the amount of \$1350.00 that was payable on September 1, 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 for unpaid rent based on a 10 Day Notice or should the 10 Day Notice be set aside?

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

Is the tenant entitled to return of all or a portion of the security deposit?

### Background and Evidence

The tenancy began on July 1, 2017 with a monthly rent of \$1350.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$1350.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified the tenant failed to pay the \$1350.00 rent payable on July 1, 2017. The post-dated cheque previously provided by the tenant had bounced due to insufficient funds. The landlord testified that on July 14, 2017 she 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 landlord testified that she received an e-transfer for the outstanding amount on July 20, 2017. The landlord testified the tenant has not since paid the August and September 2017 rent.

The tenant acknowledged service of the 10 Day Notice on July 14, 2017. The tenant testified that she sent the e-transfer on July 19, 2017, within five days of receiving the 10 Day Notice; however, the landlord did not accept the e-transfer until July 20, 2017. The tenant acknowledged August and September 2017 rent has not been paid and argued that the landlord refused to accept payment. The tenant submitted a receipt for the e-transfer; however, the submitted receipt on file is for a June 20, 2017 e-transfer. The tenant testified that this receipt was for the security deposit and that she inadvertently submitted the wrong receipt.

The tenant is also requesting half the security deposit back as the landlord collected a full month's rent as security versus the permitted half month's rent.

### Analysis

I am satisfied that the tenant was personally served with the 10 Day Notice on July 14, 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.

I accept the landlord's testimony and find the tenant did not pay the outstanding amount as per the 10 Day Notice before the five day deadline on July 19, 2017. I accept the landlord's evidence that the payment was not received until the day after the deadline on July 20, 2017. The tenant did not provide a receipt in support of her argument that the e-transfer was actually sent on July 19, 2017. In the absence of this receipt, I do not accept the tenant's argument.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application must be dismissed as the 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.

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.

I find that the tenant was obligated to pay monthly rent in the amount of \$1350.00 but failed to pay rent for the months of August and September 2017. I accept the landlord's claim for outstanding rent of \$2700.00.

The landlord continues to hold a security deposit of \$1350.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1350.00.

The tenants' application to recover the overpayment of the security deposit is dismissed as the overpayment and the balance of the security deposit has been offset with the landlord's monetary award.

### 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 \$1350.00. Should the tenants 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: September 29, 2017

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Residential Tenancy Branch