



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 4171 INVESTMENTS LIMITED  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

Tenant: MT, CNR  
Landlord: OPR, MNR, MNSD, FF

### **Introduction**

This hearing was convened in response to cross- applications by both parties pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows. The landlord applied September 07, 2017 for:

1. An Order of Possession due to unpaid rent - Section 55
2. A Monetary Order for unpaid rent - Section 67
3. To retain the security deposit in partial satisfaction of the claim – Section 38
4. An Order to recover the filing fee for this application - Section 72

The tenant applied September 08, 2017 for *More time to make their application* pursuant to Section 66 of the Act and if successful to:

1. Cancel a Notice to End for Unpaid Rent - Section 46

Both parties attended the hearing and were given full opportunity to present all relevant evidence and relevant testimony in respect to their claims and to make relevant prior submission to the hearing and participate in the conference call hearing. The tenant had benefit of assistance from an advocate for the tenant. The parties were given opportunity to mutually resolve their dispute to no avail. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The tenant acknowledged receiving the landlord's application. The landlord denied receiving the tenant's application. The tenant testified they posted their application on the landlord's place of business door (office) at 9:00 p.m. on a date unspecified by the tenant. The landlord testified their office closes at 4:00 p.m. and they were never notified nor have they ever received the tenant's

application. It must further be noted that the tenant provided they received the landlord's Notice to End in dispute dated August 21, 2017 on August 25, 2017 and filed their application 3 days after the outmost effective date of the Notice of September 05, 2017. As a result, I preliminarily found that the tenant did not serve the landlord in accordance with Section 89 of the Act; and, even if I were to have accepted that the landlord was sufficiently served with the tenant's application, I found that Section 66(3) of the Act precludes the Director from extending the time limit for the tenant to make their application in this matter as it was filed beyond the effective date of the Notice to End. As a result of all the above, **I dismissed** the tenant's application, without leave to reapply and the hearing proceeded on the merits of solely the landlord's application.

### **Issue(s) to be Decided**

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenancy started August 01, 2017 and is subject to a written tenancy agreement. The tenant still resides in the rental unit. Rent in the amount of \$850.00 is payable in advance on or before the first day of each month. At the outset of the tenancy, the landlord requested a security deposit from the tenant for half of the payable rent in the amount of \$425.00. And, on July 24, 2017 the landlord collected from the tenant \$200.00 of the prescribed \$425.00. The parties met on July 28, 2017 before the tenant occupied the rental unit at which time the tenant provided the landlord in attendance with \$825.00. In specific respect to that interaction it was undisputed by the tenant that the parties in attendance agreed the landlord would apply \$225.00 to satisfy the balance of the security deposit and \$600.00 would be applied to the first month's rent, and the tenant would satisfy the rent balance in due course after consulting with their financial benefits provider. The evidence before this proceeding is that the landlord communicated with the tenant throughout August 2017, orally and in writing, permitting them opportunity to address the arrears before issuing the tenant a Notice to End for Unpaid Rent on August 21, 2017. The tenant ultimately applied to dispute the notice but did not pay the balance of the first month's rent. The landlord testified that the tenant has further failed to pay rent for the month of

September and October 2017. The tenant did not provide proof they satisfied the rent for September or October 2017, however claimed that to their understanding their benefits provider mailed the landlord the rent for September and October 2017, which the landlord denied has occurred.

### **Analysis**

On preponderance of the evidence, and on a balance of probabilities, I find as follows.

I find the parties entered into written agreement for the payable monthly rent as \$850.00 and for the tenant to satisfy a security deposit of \$425.00 as permitted under the Act. As a result of which I find the landlord collected the required and prescribed amount from the tenant to retain in trust as required.

I find I have not been presented with evidence the tenant had a right under the Act to deduct all or a portion of the rent. Based on the evidence of both parties I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent despite their ineffective application to dispute the landlord's Notice. Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

I also find that the landlord has established a monetary claim for unpaid rent. In the absence of an augmented claim for unpaid rent for September and October 2017 I decline to grant the landlord these amounts. However, it must be known that it remains available to the landlord to make application for dispute resolution for any and all unsatisfied rent beyond the landlord's current application. The landlord is further entitled to recovery of the filing fee. *Calculation for Monetary Order as follows.*

Unpaid rent for August 2017	\$250.00
Landlord's filing fee for the cost of application	\$100.00
<b>Total monetary award / landlord</b>	<b>\$350.00</b>

The security deposit will be off-set from the award made herein.

### **Conclusion**

The tenant's application is **dismissed**, without leave to reapply.

The landlord's application is granted.

**I grant an Order of Possession** to the landlord **effective 2 days** from the day it is served on the tenant. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

**I Order** that the landlord may retain **\$350.00** of the tenant's security deposit of \$425.00 in full satisfaction of their claim and further that the remaining security deposit of \$75.00 is to be administered at the end of the tenancy in accordance with the Act.

**This Decision is final and binding.**

*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: October 04, 2017

---

Residential Tenancy Branch