



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FRASERSIDE  
(tenant name suppressed to protect privacy)

## **DECISION**

Dispute codes OPR MNR FF CNR O

### 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;
- 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 “other” remedy.

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 or should the 10 Day Notice be cancelled?

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

Is the landlord entitled to recover the filing fee for this application from the tenants?

Is the tenant entitled to “other” relief?

### Background and Evidence

The tenancy began on November 1, 2015 with a monthly rent of \$650.00 payable on the 1<sup>st</sup> day of each month. The tenant was responsible for 100% of the utilities which are in the tenant’s

name. The tenant paid a security deposit of \$325.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified the tenant failed to pay the \$650.00 rent payable on August 1, 2017 plus an arrears of \$375.00 from July 2017. The landlord testified that on August 4, 2017 the tenant was served with the 10 Day Notice by posting a copy to the door of the rental premises.

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 has since made two payments of \$275.00 each dated September 22, 2017 and October 20, 2017. The tenant was issued receipts for use and occupancy only for these payments.

The landlord is claiming a total of \$1642.50 outstanding which includes \$142.50 for an unpaid utility bill sent to the landlord by the city.

The tenant acknowledged service of the 10 Day Notice and that he did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenant agreed to the amount of outstanding rent as claimed by the landlord. The tenant testified he did not pay the rent as the landlord has failed to take care of bed bugs and fleas in the rental unit. The tenant was seeking relief of bed bugs and fleas in the rental unit.

### Analysis

I am satisfied that the tenant was served with the 10 Day Notice on August 7, 2017, three days after its posting, pursuant to sections 88 & 90 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.

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 accept the landlord's claim for outstanding rent and utilities in the amount of \$1642.50.

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 total monetary award of \$1742.50.

The landlord continues to hold a security deposit of \$325.00. 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 \$1417.50.

As this tenancy has come to an end, the tenant's request for a remedy to the alleged bed bug and flea infestation is a moot point and is dismissed.

#### 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 \$1417.50. 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 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: October 30, 2017

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Residential Tenancy Branch