



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding APA Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            OPR MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on October 23, 2017. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The landlord's agent (the agent) attended the hearing and provided affirmed testimony. The tenant did not attend the hearing. The landlord testified that he sent the application package, along with supporting evidence to the tenant on September 14, 2017, by registered mail. I find the tenant is deemed to have received this package on September 19, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The agent has requested to amend his application to include rent that has accrued since the original application date (for October 2017). I turn to the following Rules of Procedure (4.2):

#### **Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Further, the agent requested to amend his application to allow him to retain the security deposit to offset rent owed. In consideration of these requests, hereby amend the agent's application accordingly.

The agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?

2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

### Background and Evidence

The agent provided a copy of the tenancy agreement between the parties into evidence. It confirms the tenancy began on October 3, 2013. Rent was initially set at \$995.00, and was increased to \$1,031.80 as of January 1, 2017. The agent holds a security deposit of \$500.00.

The agent testified that the tenant has a long history of missed rent payments dating back to early 2014. The agent provided a detailed worksheet indicating the amounts due and the amounts paid each month, dating back to the start of the tenancy. The agent testified that he has been very lenient and accommodating with the tenant over the years but the tenant continually fails to honour his payment obligations.

The agent testified, and indicated in his worksheet, that the tenant has regressed from sporadic and partial payments over the years to, more recently, complete non-payment. He further testified that he has received no money from the tenant since March 2017.

The agent provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was hand delivered to the tenant on May 19, 2017. As per the Proof of Service document, the tenant signed for and acknowledged receipt of the 10 Day Notice. The 10 day Notice specified that the tenant owed \$15,080.00 in rent and \$6,600.00 in unpaid utilities at that time.

The agent stated that he is not claiming for utilities anymore, and to simplify his claim, he just wants to recover the unpaid rent.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant had a balance of unpaid rent at the time the 10 Day Notice was issued. On May 19, 2017, the 10 Day Notice was given to the tenant in person; find the tenant received the 10 Day Notice on this day.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the tenant did either. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The agent is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

With respect to the agent's request for a monetary order for unpaid rent, I find there is sufficient evidence from the agent's to demonstrate that the tenant owes and has failed to pay rent on numerous occasions dating back to early 2014. As summarized in the hearing, and documented in the worksheet the agent provided as part of his evidence package, I find the tenant owed \$19,206.20 in unpaid rent up to and including September of 2017. Given the tenant is still in the unit, and has also failed to pay any rent for October of 2017, I amend this amount to include another month's rent, putting the accrued balance up to \$20,238.00.

The agent requested that they be able to retain the security deposit of \$500.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the agent was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the agent, be kept and used to offset the amount of rent still owed by the tenant. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent dating back to early 2014	\$20,238.00
Other:	
Filing fee	\$100.00
<b>Less:</b>	
Security Deposit currently held by Agent	(\$500.00)
<b>TOTAL:</b>	<b>\$19,838.00</b>

## Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$19,838.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 23, 2017

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Residential Tenancy Branch