



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR MNR

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on October 24, 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 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 his 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 Landlord has requested to amend his application to include rent that has accrued since the original application date. 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 Landlord requested to amend his application to allow him to retain the security deposit to offset rent owed. In consideration of both of these requests, I hereby amend the Landlord's application accordingly.

The Landlord 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 Landlord testified that rent, in the amount of \$1,100.00, is due on the first day of each month, and that he holds a security deposit of \$550.00.

The Landlord testified that he issued the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) in June. He stated that he made an earlier application to obtain an order of possession but had to reapply, since there was an issue with his first application. The Landlord testified that the 10 Day Notice was personally served to the Tenant on June 8, 2017. Service of this document was witnessed by a third party. The amount owing at that time was \$1,100.00. The Landlord testified that the Tenant has made partial payments, since the 10 Day Notice was issued, as follows:

<b>Date</b>	<b>Item</b>	<b>Amount Due</b>	<b>Amount Paid</b>	<b>Accrued Balance Owing</b>
June 1, 2017	Rent Due	\$1,100.00	\$0.00	\$1,100.00
July 1, 2017	Rent Due	\$1,100.00	\$0.00	\$2,200.00
July 12, 2017	Rent Payment		\$350.00	\$1,850.00
August 1, 2017	Rent Due	\$1,100.00	\$0.00	\$2,950.00
August 21, 2017	Rent Payment		\$450.00	\$2,500.00
September 1, 2017	Rent Due	\$1,100.00	\$0.00	\$3,600.00
September 6, 2017	Rent Payment		\$500.00	\$3,100.00
September 22, 2017	Rent Payment		\$600.00	\$2,500.00
October 1, 2017	Rent Due	\$1,100.00	\$0.00	\$3,600.00
October 6, 2017	Rent Payment		\$750.00	\$2,850.00
<b>Total Accrued Balance</b>				<b>\$2,850.00</b>

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, under section 46(4) of the *Act*, after receipt 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 owed past due rent at the time the 10 Day Notice was issued. The landlord personally served the 10 Day Notice to the Tenant on June 8, 2017, for \$1,100.00 in unpaid June rent. I find the Tenant received the 10 Day Notice on June 8, 2017.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the tenant made several partial payments outside of this window, the evidence before me indicates that the Tenant did not pay the total balance outstanding within 5 days of being served with the 10 Day Notice. 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 Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay \$2,850.00 in past due rent.

The Landlord requested that they be able to retain the security deposit of \$550.00 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 Landlord, 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 as above	\$2,850.00
Other:	
Filing fee	\$100.00

<b>Less:</b>	
Security Deposit currently held by Landlord	(\$550.00)
<b>TOTAL:</b>	<b>\$2,400.00</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 **\$2,400.00**. 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 24, 2017

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Residential Tenancy Branch