



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR MNSD MNDC MT CNR

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt applications from both parties:

The landlord applied for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- an Order allowing the landlord to retain the tenant's security deposit pursuant to section 38; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and utilities.

The tenant applied for:

- more time to dispute a landlord's notice to end tenancy pursuant to section 66; and
- a cancellation of the landlord's notice to end tenancy pursuant to section 55.

Both the tenant and the landlord's agent J.H. (the "landlord") attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant acknowledged receipt of the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") posted on his door on August 12, 2017. Pursuant section of the *Act*, the tenant is found to have been served with the 10 Day Notice in accordance with the *Act* on August 15, 2017 three days after its posting.

Both parties acknowledged receipt of each other's applications for dispute resolution and evidentiary packages by way of Canada Post Registered Mail. Pursuant to section 88 & 89 of the *Act* both parties are found to have been duly served in accordance with the *Act*.

Issue(s) to be Decided

Can the tenant cancel the landlord's Notice to End Tenancy? If not, should the landlord be granted an Order of Possession?

Should the tenant be granted more time to make an application to cancel the notice?

Is the landlord entitled to a monetary award?

Can the landlord retain the tenant's security deposit?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

Testimony, along with a copy of the Residential Tenancy Agreement were provided to the hearing explain that this tenancy began on November 15, 2012. Rent was \$900.00 per month at the outset of the tenancy and has since risen to \$995.00. A security deposit of \$450.00 collected at the outset of the tenancy continues to be held by the landlord.

The landlord explained that she sought an Order of Possession and a Monetary Award of \$4,836.16 for unpaid rent because the tenant had failed to pay rent for July and August 2017. Additionally, the tenant failed to pay rent for September, October and November 2017.

The tenant did not dispute that rent was unpaid for the months listed by the landlord but explained that rent had been refused in September by the landlord, therefore, he had chosen not to pay it for the proceeding months.

Analysis

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. While the tenant has made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice, no evidence was presented at the hearing which showed rent for July and August 2017 had been paid. In accordance with section 46(5) of the *Act*, the tenant's failure to pay the outstanding rent within five days or to provide adequate evidence showing that rent was paid for July and August 2017 has led to the end of the tenancy on the effective date of the notice. In this case,

this required the tenant to vacate the premises by August 25, 2017, 10 days after its deemed service date of August 15, 2017. As that has not occurred, I find that the landlord is entitled to a 10 day Order of Possession.

The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenant does not vacate the rental unit within the 10 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Pursuant to section 66 of the *Act*, I grant the tenant 10 days to vacate the premises after having been served with the landlord's order of possession because some evidence was presented at the hearing that the landlord has a child, for whom he must make alternative living arrangements.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

At the hearing the tenant did not dispute that rent remained unpaid for July and August 2017; however, he said that the landlord rejected his attempts to pay rent for September 2017. The tenant acknowledged that he did not attempt to pay rent for October and November 2017.

I find that the landlord is entitled to a monetary award of \$3,980.00 for unpaid rent. I decline to award the landlord a monetary award for September 2017 because an attempt was made by the tenant to pay it. Furthermore, the landlord could have accepted the September payment for *use and occupancy only* but instead chose to reject it outright.

During the course of the hearing, no reasons were given as to why the tenant sought more time to cancel the landlord's notice to end tenancy.

As the landlord was successful in the application, they may recover the \$100.00 filing fee associated with the application. In partial relief of the monetary award, the landlord

may retain the tenant's security deposit pursuant to the offsetting provisions contained in section 72 of the *Act*.

### Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenant does not vacate the rental unit within 10 days of service of this Order, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a Monetary Order pursuant to section 67 of the *Act* for \$3,630.00 in favour of the landlord as follows:

| Item                          | Amount            |
|-------------------------------|-------------------|
| Unpaid rent for July 2017     | \$995.00          |
| Unpaid rent for August 2017   | 995.00            |
| Unpaid rent for October 2017  | 995.00            |
| Unpaid rent for November 2017 | 995.00            |
| Less Security Deposit         | (-450.00)         |
| Return of Filing Fee          | 100.00            |
| <b>Total =</b>                | <b>\$3,630.00</b> |

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. 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: November 9, 2017

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Residential Tenancy Branch