



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding SAANICH PENINSULA REALTY LTD.  
and [tenant name suppressed to protect privacy]

### **DECISION**

#### **Dispute Codes:**

Tenant: CNR, MNDCT, ERP, LRE, OLC, PSF, RR  
Landlord: OPR, MNR, 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 tenant applied September 27, 2017 and subsequently amended as follows;

1. To cancel a Notice to End for Unpaid Rent - Section 46
2. Monetary Order / compensation for loss – Section 67
3. For landlord to make emergency repairs – Section 33
4. To suspend or make conditional the landlord's right to enter – Section 70
5. Landlord to comply with the Act – Section 62
6. Landlord to provide services or facilities required by agreement or law – Section 65
7. To reduce rent for services or facilities agreed upon but not provided – Section 65
8. To recover the filing fee – Section 72

The landlord applied February 06, 2017 as follows:

1. An Order of Possession due to unpaid rent - Section 55
2. A Monetary Order for unpaid rent - Section 67
3. To recover the filing fee - Section 72

Both parties attended the hearing. The parties were given opportunity to mutually resolve their dispute to no avail. The tenant acknowledged receiving the landlord's evidence by registered mail. The tenant claims they served the landlord with all of their evidence by posting it on their door. The landlord denied receiving any evidence from the tenant. Both parties agreed the tenant received 2 - 10 Day Notices to End the Tenancy for Unpaid Rent, which are in respect to a portion of this dispute.

#### *Preliminary matters*

It must be known that in this type of proceeding an Arbitrator may dismiss portions of an application, with or without leave, if they are not sufficiently related. One of the objectives of the Rules of Procedure for hearings of this nature is to ensure a consistent, efficient and just process for resolving disputes (Rule 1.3). Accordingly, hearings are generally limited to issues that are related in fact and law. In this case, the parties were informed that all issues than those respecting the 10 Day Notices to End for Unpaid Rent

are not sufficiently related to the balance of the remaining issues in dispute which I am preliminarily dismissing pursuant to Rule 2.3.

The parties agreed the tenant vacated the rental unit November 04, 2017, effectively rendering the tenant's application respecting items of a surviving tenancy moot, and I therefore preliminarily dismiss the tenant's application items 1, 3, 4, 5, 6, 7.

As there is insufficient proof that the tenant's evidence was exchanged I dismiss the tenant's claim of *money owed or compensation for loss* (tenant's application item 2), with leave to re-apply. That is, it is available to the tenant to *reapply for money owed or compensation for loss*.

As result of the tenant having already vacated the rental unit the landlord has regained *de facto* possession and does not require an Order for possession.

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

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed evidence is as follows. The tenancy started November 03, 2015. It was agreed that monthly rent in the amount of \$1400.00 was payable in advance on the first day of each month. The tenant failed to pay rent in the month of September 2017 and on September 23, 2017 the landlord served the tenant with a notice to end tenancy for non-payment of rent stating the tenant owed rent of \$1400.00. The tenant further failed to pay all rent in October 2017 and the landlord again served the tenant with notice to end tenancy for non-payment of rent stating the tenant owed rent of \$1400.00 for October 2017. The tenant applied to dispute the notice but did not pay the outstanding rent. The tenant acknowledged not paying the rent for September, October and November 2017.

### **Analysis**

On preponderance of the relevant evidence I find as follows. **Section 26** of the Act states;

#### **Rules about payment and non-payment of rent**

- 26** (1) 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.

Based on the evidence of both parties I find that the tenant was served with notices to end tenancy for non-payment of rent and I find the notices valid. The tenant has not paid the outstanding amounts of rent despite their application to dispute the landlord's Notice. I find that the landlord has established a monetary claim for unpaid rent. The landlord is also entitled to recovery of the filing fee.

#### *Calculation for Monetary Order*

Unpaid rent September 2017	\$1400.00
Unpaid rent October 2017	\$1400.00
Unpaid rent November 2017	\$1400.00
Landlord's filing fee for the cost of application	\$100.00

Monetary Order / landlord	<b>\$4300.00</b>
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**Conclusion**

The tenant's application is dismissed, *with leave to reapply for money owed or compensation for loss.*

The landlord's application in part is granted.

**I grant** the landlord an Order under Section 67 of the Act for the amount of **\$4300.00**. If the tenant does not satisfy this Order the Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**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: November 14, 2017

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Residential Tenancy Branch