



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, MNSD, OPC, OPR, FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent and for cause
- b. A monetary order in the sum of \$7940 for unpaid rent and damages
- c. An Order to retain the security deposit.
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the Tenant resides on August 11, 2017. I find that the one month Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the Tenant resides on August 11, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the landlord was served on the tenant by mailing, by registered mail to where the Tenant resides on September 2, 2017. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into an oral tenancy agreement that provided that the tenancy would start on May 1, 2017. The rent is \$1985 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$950 at the start of the tenancy.

The tenant(s) failed to pay the rent for the months of September, October and November 2017 and the sum of \$5955 remains owing. The tenant(s) continues to reside in the rental unit. .

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession on the basis of the one month Notice to End Tenancy and 10 day Notice to End Tenancy. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Further, the ground set out in the one month Notice to End Tenancy was that the tenant was repeatedly late paying the rent. The Policy Guidelines provide that 3 late payments is sufficient basis for a one month Notice to End Tenancy. The tenant was late paying the rent for the months of June, July and August 2017.

The landlord is also entitled to an Order of Possession on the basis of the 10 day Notice to End Tenancy. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Further, the tenant failed to pay the rent for August when due. The Act provides that if the Tenant pays the rent within 5 days of receiving the Notice the Notice is void. The tenant failed to pay the rent within the 5 day period. The rent was eventually paid on September 1, 2017. The landlord did not agree to reinstate the tenancy.

Accordingly, I granted the landlord an Order for Possession on 2 days notice.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of September, October and November 2017 and the sum of \$5955 remains owing. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$5955 plus the sum of \$100 in respect of the filing fee for a total of \$6055.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$950. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum \$5145.

Conclusion:

I ordered that the Landlord shall retain the security deposit of \$950. In addition I further ordered that the Tenant(s) pay to the Landlord(s) the sum of \$5145.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on both parties.**

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 22, 2017

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Residential Tenancy Branch