



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's office manager MB (the "landlord") primarily spoke for the landlord.

As both parties attended the hearing I confirmed that there were no issues with service. The tenant confirmed receipt of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"), dated September 11, 2017 and the landlord's application for dispute resolution dated September 22, 2017 and evidence. The tenant said that he had not submitted any evidence. I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenant has failed to pay rent for October and November and that the total arrears including rent owing as of the date of the hearing is \$13,800.00. Pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure, as additional rent becoming due is reasonably foreseeable, I amend the landlord's Application to increase the landlord's monetary claim from \$12,600.00 to \$13,800.00.

### Preliminary Issue – Adjournment Request

At the outset of the hearing, the tenant made a request that the hearing be adjourned. The tenant said that he has an advocate who is unable to attend the hearing. The tenant said that he had knowledge of the issues and was prepared to give evidence should the hearing proceed. The landlord did not consent to the hearing being adjourned and rescheduled.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

The present hearing arises from a 10 Day Notice dated September 11, 2017 and the tenant confirmed he was served with a Notice of Hearing by the landlord and was aware of the hearing date since sometime in September. The tenant confirmed that he was aware of the issues and was prepared to give evidence. The tenant said that he was informed by his advocate that they were unable to attend and he was advised to seek an adjournment. The tenant said he did not know when the advocate would be available, did not provide testimony of when he first sought an advocate, nor did he provide any information as to why an adjournment or alternate advocate was not found earlier.

Under these circumstances, I find that there is little prejudice to the tenant to proceed with a hearing. The tenant testified that he had knowledge of the issues and evidence. In the absence of information about the advocate's schedule, or when the tenant first engaged an advocate I find that I cannot conclude that the need for adjournment does not arise due to the tenant's failure to take adequate steps earlier. While it was unfortunate the tenant's advocate could not attend the teleconference hearing, the tenant confirmed he was able to represent himself and had full knowledge of the

matters at hand. At the hearing, I found that the tenant had not met the criteria established for granting an adjournment and proceeded with the hearing.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The tenant will pay the landlord \$12,000.00 in full and final settlement of the arrear for this tenancy as at the date of the hearing, November 1, 2017. The payment will be made in two installments.
  - a. \$6,500.00 by 5:00pm on November 3, 2017; and
  - b. \$5,500.00 by 5:00pm on December 31, 2017.
2. The landlord's 10 Day Notice is cancelled and of no force or effect.
3. This tenancy will continue with a monthly rent of \$2,100.00 payable on the 1<sup>st</sup> of each month.
4. This settlement agreement constitutes a final and binding resolution of the landlord's application at this hearing.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

### Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be served on the tenant by the landlord **only** if the tenant fails to pay any of the installment payments of \$6,500.00 by 5:00pm November 3, 2017 or \$5,500.00 by 5:00pm December 31, 2017. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour in the amount of \$12,000.00, to be used **only** in the event that the tenant does not abide by the monetary terms of the settlement agreement outlined above. 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 1, 2017

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Residential Tenancy Branch