



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR

### Introduction

This participatory hearing was convened after the issuance of a September 28, 2017, interim decision by an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord. Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. The Adjudicator reconvened the landlord's application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*, and
- a monetary order for unpaid rent pursuant to section 67 of the *Act*.

The tenant did not attend this hearing, although I waited until 11:12 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord gave undisputed affirmed testimony that he personally served the tenant a copy of the notice of this adjourned hearing on September 29, 2017. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the notice of this hearing on September 29, 2017.

The landlord entered into evidence a signed and witnessed Proof of Service Document that the Landlord's Application for Dispute Resolution (the Application), along with all supporting evidence, was personally served to the tenant on September 21, 2017, as a part of the direct request proceeding package. In accordance with sections 88 and 89 of the *Act*, I find the tenant was duly served with the Application and supporting evidence on September 21, 2017.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was left with an adult who resides with the tenant on September 10, 2017. In accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to the tenant on September 10, 2017.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

#### Background and Evidence

The landlord gave written evidence that this tenancy began on April 01, 2014, with a monthly rent of \$1,700.00 due on the first day of each month. The landlord testified that he continues to retain a security deposit in the amount of \$850.00.

A copy of the signed 10 Day Notice dated September 10, 2017, identifying \$3,400.00 in rent owing for this tenancy, with an effective date of September 20, 2017, was included in the landlord's evidence.

The landlord testified that the tenant's co-tenant is still in the rental unit.

The landlord submitted that \$1,700.00 was paid towards the amount owing on the 10 Day Notice on October 01, 2017, and \$1,700.00 was paid on November 01, 2017. The landlord stated that these payments were for the unpaid monthly rent for August 2017 and September 2017. The landlord testified that they have given receipts for the payments made which indicate that the payments are accepted for temporary occupancy only.

#### Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord's evidence and undisputed testimony, I find the tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on September 20, 2017, the effective date on the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by September 20, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

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.

Based on the undisputed written evidence and affirmed testimony, I find the tenant's payments on October 01, 2017 and November 01, 2017, were for the unpaid rent owing for August 2017 and September 2017. I further find the landlord is entitled to a monetary award of \$3,400.00 for unpaid rent owing for this tenancy for October 2017 and November 2017.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and to retain the tenant's security deposit:

Item	Amount
Unpaid October 2017 Rent	\$1,700.00
Unpaid November 2017 Rent	1,700.00
Less Security Deposit	-850.00
<b>Total Monetary Order</b>	<b>\$2,550.00</b>

The landlord is provided with this 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 Orders 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 14, 2017

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Residential Tenancy Branch