



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT Limited Partnership  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Tenant: CNR CNC OLC FF  
Landlord: OPR MNR MNDC FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on December 12, 2017.

The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- cancel the 10 Day Notice to End Tenancy for Unpaid rent or utilities (the 10 Day Notice);
- to cancel the 1 Month Notice to End Tenancy for Cause pursuant to section 47 (the 1 Month Notice);
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement; and,
- to recover the filing fee for the cost of this application.

The Landlord cross-applied for the following relief:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*; and,
- to recover the filing fee for the cost of this application.

### Preliminary and Procedural Issues

The Tenant did not attend the hearing. Since the Tenant did not appear at the hearing, I dismiss her application, and all her amendments, in their entirety without leave to reapply.

The Landlord's Agent (the "Landlord") attended the hearing and provided affirmed testimony. The Landlord stated that she sent the Tenant a copy of her Application Package and evidence on October 30, 2017, by registered mail. I find the Tenant received this package on November 4, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord has requested to amend her application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

#### **Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlord's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

### Background and Evidence

The Landlord testified that current rent is \$1,050.00 per month and is due on the first day of each month. The Landlord holds a security deposit in the amount of \$525.00. The Landlord testified that the Tenant owed \$1,050.00 in unpaid rent for October 2017 at the time she issued the 10 Day Notice. The Landlord testified that she served the 10 Day Notice by posting it to the Tenant's door on October 6, 2017. Service of this document was witnessed by a third party. The Landlord included a proof of service to support this. The Landlord testified that the Tenant has not paid any rent or any amount of money to them since September of 2017. The Landlord stated that the Tenant owes rent in full, for October, November, and December of 2017.

The Landlord stated that it appears the Tenant has put a stop payment on her rent withdrawals. As such, the Landlord stated that the Tenant has accrued late fees and NSF fees for the last 3 months. Each month (for October - December 2017) there is a \$25.00 late rent fee, and a \$25.00 NSF fee, as per the written tenancy agreement provided into evidence.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

Based on the information summarized above, I find that the Tenant owed \$1,050.00 at the time the 10 Day Notice was issued and posted to her door on October 6, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on October 9, 2017.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the Tenant filed an application (amendment) to dispute this 10 Day Notice on October 10, 2017, she failed to attend this hearing to provide evidence in support of her application. The Landlord has stated that no rent has been paid since September of 2017 and the evidence before me indicates that at the end of the 5 day period, on October 14, 2017, the tenant had not paid rent in full. As such, I find the Tenant is conclusively presumed to have accepted the end of the tenancy. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Next, I turn to the Landlord's request for a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*.

After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay rent for the months of October through December 2017, inclusive (\$1,050.00 x 3). Further, as per the tenancy agreement, I find the Tenant is also responsible for late rent and NSF fees for the same months. These fees total \$50.00 per month over the 3 months of non-payment.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent, as above	\$3,150.00
Late rent and NSF fees, as above	\$150.00
Other:	\$100.00
Filing fee	
<b>TOTAL:</b>	<b>\$3,400.00</b>

### Conclusion

The Tenant's application and all amendments are dismissed without leave to reapply.

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this

order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,400.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 12, 2017

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Residential Tenancy Branch