



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **Landlord:** OPL, MNR, MNSD, FF  
                              **Tenant:** MT, CNL, DRI, FF

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 49 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenant sought:

- more time to make an application to cancel a notice to end tenancy pursuant to section 66;
- cancellation of the landlord's Two Month Notice pursuant to section 49;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord, the tenant and the tenant's assistant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlord was assisted at the hearing by T.C. for interpreting when necessary.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Tenant's Application) and evidence which was personally served to him on September 20, 2017. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with the Tenant's Application and evidence.

The tenant acknowledged receipt of the Landlord's Application for Dispute Resolution (the Landlord's Application) and evidence which was sent to her by way of registered

mail on September 26, 2017. In accordance with sections 88 and 89 of the *Act*, I find the landlord is duly served with the Landlord's Application.

The tenant acknowledged receipt of the landlord's Two Month Notice, which was personally served to her on July 18, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's Two Month Notice.

At the outset of the hearing the tenant stated that she is moving out of the rental unit on November 30, 2017, and is withdrawing the Tenant's Application in its entirety.

The Tenant's Application is withdrawn

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the Two Month Notice?

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Background and Evidence

The tenant gave written evidence that this tenancy began on June 25, 2013, with a monthly rent of \$1,250.00 due on the first day of each month. The landlord testified that he continues to retain a security deposit in the amount of \$625.00.

A copy of the signed Two Month Notice, dated July 18, 2017, with an effective date of September 30, 2017, was included in the landlord's evidence.

The tenant admitted that she owes a total of \$2,500.00 in unpaid rent for October 2017 and November 2017. The tenant stated that she gave the landlord her rent cheques for both months but that the landlord gave the cheques back to her.

The landlord confirmed the amount that the tenant owed in unpaid rent and testified that he was concerned about accepting money from the tenant before this hearing took place. The landlord testified that he has accepted the tenant's notice to vacate the rental unit on November 30, 2017.

### Analysis

Section 49 of the *Act* establishes that a landlord may issue a Two Month Notice for Landlord's Use of Property.

Section 49(9) of the *Act* stipulates that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 15 Days after the date the tenant receives the notice, 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.

As the tenant has withdrawn their Tenant's Application and gave notice to the landlord to vacate the rental unit on November 30, 2017, which the landlord accepted, I find the landlord is entitled to a two (2) day Order of Possession as the date of this decision is December 01, 2017, in accordance with sections 49(9) and 62 of the *Act*.

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 affirmed testimony of the landlord and the tenant, I find that the landlord is entitled to a monetary award of \$2,500.00 for unpaid rent owing for this tenancy for October 2017 and November 2017.

Pursuant to 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.

I find that the landlord had the cheques for the October 2017 and November 2017 in hand and could have cashed the cheques for temporary use of the rental unit until the hearing took place. I further find that the monetary portion of the Landlord's Application would not have been necessary if the landlord had cashed the cheques when the rent was due. For the above reason I dismiss half of the filing fee associated with the monetary portion of the Landlord's Application which should have been unnecessary.

I find that the landlord is entitled to half of the filing fee as they were successful in their Landlord's Application to obtain an Order of Possession.

### Conclusion

I accept the withdrawal of the Tenant's Application in its entirety.

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 July 2017 Rent	\$1,250.00
Unpaid August 2017 Rent	1,250.00
Less Security Deposit	-625.00
Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,925.00</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: December 06, 2017

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Residential Tenancy Branch