



# 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 29, 2017, interim decision by an Adjudicator. The Adjudicator determined that the landlords' 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 landlords' application to a participatory hearing for the following:

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

The tenant did not attend this hearing, although I waited until 9:30 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:42 a.m. The landlord and the landlord's agent attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the RTB Rules of Procedure provides as follows:

**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 testified that he sent the tenant a copy of the notice of this adjourned hearing by registered mail on October 05, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the notice of this hearing on October 10, 2017, the fifth day after its registered mailing.

The landlord provided written evidence that the Landlord's Application for Dispute Resolution (the Application), along with all supporting evidence, was served to the tenant by way of registered mail on September 21, 2017, as a part of the direct request proceeding package. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find the tenant was deemed served with the Application and supporting evidence on September 26, 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 posted to the door of the rental unit on September 06, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was deemed served to the tenant on September 09, 2017.

The landlord requested to amend the Application for a monetary award from \$932.00 to \$2,796.00 due to rent owing since the 10 Day Notice was issued to the tenant. Residential Tenancy Branch Rule of Procedure 4.2 states that 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 allowed this amendment to the landlord's monetary application for additional rent as it is clear that the tenant would have known that rent for the rental unit had become owing since the landlord submitted his application for dispute resolution.

#### Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

The landlord gave written evidence that this tenancy began on June 23, 2003, with a monthly rent of \$750.00 due on the first day of each month. The landlord testified that they continue to retain a security deposit in the amount of \$375.00.

A copy of the signed 10 Day Notice dated September 06, 2017, identifying \$932.00 in rent owing for this tenancy, with an effective date of September 16, 2017, was included in the landlord's evidence.

The landlord also provided in evidence a copy of a letter that was sent to the tenants to notify of a change in management.

The landlord testified that they believe the tenant is still in the rental unit and that no money has been paid towards the amount owing on the 10 Day Notice.

The landlord's amended application for a monetary award of \$2,796.00 is for \$932.00 in unpaid monthly rent for September 2017, October 2017 and November 2017.

### 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 landlords' 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. I find that, due to the failure of the tenant to take either of these actions within five days, the tenant is conclusively presumed to have accepted the end of this tenancy on September 19, 2017, the corrected effective date on the 10 Day Notice pursuant to sections 46(5) and 53(2) of the *Act*. In this case, the tenant and anyone on the premises were required to vacate the premises by September 19, 2017. As this has not occurred, I find that the landlords are 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. I find the landlord did not provide a tenant ledger showing the rent owing and paid during this tenancy or any Notice of Rent Increase forms to establish the current monthly rent claimed of \$932.00. I further find that the Direct Request Worksheet only shows the unpaid rent owing for September 2016. Based on the above and the undisputed written evidence and affirmed testimony, I find that the landlords are entitled to a monetary award of \$2,250.00 for unpaid rent owing for this tenancy for September 2017, October 2017 and November 2017

Although the landlords' application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords 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 landlords 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 landlords' favour under the following terms, which allows the landlords to recover unpaid rent and to retain the tenant's security deposit:

Item	Amount
Unpaid September 2017 Rent	\$750.00
Unpaid October 2017 Rent	750.00
Unpaid November 2017 Rent	750.00
Less Security Deposit	-375.00
<b>Total Monetary Order</b>	<b>\$1,875.00</b>

The landlords are 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 05, 2017

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Residential Tenancy Branch