



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPRM-DR, FFL

### Introduction

On November 15, 2017, an Adjudicator appointed under the *Residential Tenancy Act* (the *Act*) issued an Interim Decision adjourning the landlord's direct request application for the following outcomes to a participatory hearing:

- 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.

I presided over this participatory hearing. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:16 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:00 a.m. The landlord's agent (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.

The landlord gave sworn testimony supported by written evidence that the landlord sent the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by registered mail on October 23, 2017. The landlord entered into written evidence a copy of the Canada Post Tracking Number to confirm this registered mailing. On November 16, 2017, the landlord sent a copy of the landlord's dispute resolution hearing package and written evidence to the tenant by registered mail. Again, the landlord entered into written evidence a copy of the Canada Post Tracking Number to confirm this mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant has been deemed served with these documents on the fifth day after their registered mailing.

During the hearing, the landlord advised that in addition to the \$10,850.00 in outstanding rent claimed in the landlord's application for dispute resolution, the tenant has failed to pay rent for November 2017. On that basis, I have amended the landlord's application for a monetary award to \$12,400.00, plus the requested recovery of the landlord's \$100.00 filing fee.

### 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? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

The landlord entered into written evidence a copy of a four year fixed term tenancy agreement for this rental suite in a strata property commencing on November 9, 2013. Monthly rent is set at \$1,550.00, payable in advance on the 10<sup>th</sup> of each month. The landlord continues to hold the tenant's \$775.00 security deposit, paid on November 9, 2013.

The landlord's application for a monetary award of \$10,850.00, the same amount identified as owing in the 10 Day Notice, indicated that the tenant has not paid rent from April through October 2017, as well as the November 2017 rent. The landlord provided both key fobs to the tenant and has not retained any key fobs to access the rental unit. The landlord said that she believes that the tenant may have vacated the rental unit, but has no way of accessing the rental unit at this time.

#### Analysis

The tenant failed to pay the rent identified as owing in the 10 Day Notice within five days of being deemed to have received that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by November 6, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Based on the undisputed sworn testimony and written evidence provided by the landlord, I find that the landlord is entitled to a monetary award of \$1,550.00 for each of the eight months from April 2017 until 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. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 under the following terms, which allows the landlord to recover unpaid rent owing from April to November 2017 and the filing fee for this application, and to retain the tenant's security deposit in partial satisfaction of the monetary award:

Item	Amount
Unpaid Rent April to November 2017 – (8 months @ \$1,550.00 = \$12,400.00)	\$12,400.00
Less Security Deposit	-775.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$11,725.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders 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 14, 2017

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Residential Tenancy Branch