



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR MNR

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") to obtain an order of possession for unpaid rent or utilities, and for a monetary order for unpaid rent or utilities.

An agent for the landlord R.R. ("agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on December 20, 2017. A copy of the registered mail tracking number receipt was submitted in evidence and the tracking number has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website information the registered mail package was signed for and accepted on December 21, 2017. Based on the above, I find the tenant was served with the Notice of Hearing, application and documentary evidence on December 21, 2017 which is the actual date the registered mail package was signed for and accepted. As the tenant did not attend the hearing, I find that this application is undisputed and unopposed by the tenant.

### Preliminary and Procedural Matters

Firstly, the agent requested to change the landlord's name on the application to the corporate landlord name which was permitted in accordance with section 64(3) of the *Act*.

Secondly, the agent requested to increase their monetary claim from the original amount of \$425.00 to also include loss of rent for January 2018 of \$425.00 as the tenant continued to

occupy the rental unit into January 2018 and has not returned the rental unit keys so is unsure if the tenant has vacated as no rental unit keys have been returned to the landlord or agent. The agent was advised that loss of January 2018 rent would be included as I find the tenant would not be prejudiced by such an amendment as the tenant would know or ought to have known that by continuing to occupy the rental unit into January 2018 that loss of rent would be suffered by the landlord. This amendment was also permitted pursuant to section 64(3) of the *Act*.

Thirdly, the agent requested to retain the tenant's security deposit verbally during the hearing and to recover the cost of the filing fee and as a result and pursuant to sections 67 and 72 of the *Act*, if the landlord is entitled to a monetary claim, I will offset any amount with the tenant's security deposit plus any applicable interest under the *Act* and if successful, the landlord will be granted the recovery of the cost of the \$100.00 filing fee.

#### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on December 23, 2013 and reverted to a month to month tenancy after a three month time period. Monthly rent in the amount of \$425.00 was due on the first day of each month. The tenant paid a security deposit of \$212.50 at the start of the tenancy which the landlord continues to hold. The agent confirmed service of the 10 Day Notice by posting to the tenant's door on December 4, 2017. The 10 Day Notice included an effective vacancy date of December 14, 2017 and indicated that \$425.00 was owed as of December 1, 2017. The tenant did not dispute the 10 Day Notice and did not pay any of the amount owed within five days of receiving the 10 Day Notice or on any date thereafter.

As the agent is unsure if the tenant continues to occupy the rental unit due to no rental unit keys being returned, the landlord is seeking an order of possession and a monetary order for unpaid rent for December 2017 and loss of rent for January 2018.

#### Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice is listed as December 14, 2017. The effective date would automatically correct to December 17, 2017 pursuant to section 53 of the *Act* as documents posted to the tenant's door are deemed served three days after they were posted on December 4, 2017 pursuant to section 90 of the *Act*. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which corrects to December 17, 2017. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

**Claim for unpaid rent and loss of rent** –The agent testified that the tenant continues to owe \$425.00 in unpaid December 2017 rent and now the landlord has suffered a loss of rent of \$425.00 for January 2018. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$850.00** comprised of rent arrears and loss of rent.

The landlord is holding the tenant's security deposit of \$212.50 which was paid by the tenant at the start of the tenancy and has accrued \$0.00 in interest. As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

**Monetary Order** – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus \$0.00 in interest as follows:

Rent arrears and loss of owed by tenant for December 2017 and January 2018 (\$425.00 X 2 months)	\$850.00
Filing fee	\$100.00
<b>Subtotal</b>	<b>\$950.00</b>
<i>(Less tenant's security deposit including \$0.00 interest)</i>	<i>-( \$212.50)</i>
<b>TOTAL BALANCE OWING BY TENANT TO LANDLORD</b>	<b>\$737.50</b>

Given the above, and pursuant to sections 67 and 72 of the *Act*, I **authorize** the landlord to retain the tenant's full security deposit including \$0.00 in interest of \$212.50 from the \$950.00 amount owing to the landlord. Therefore, I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$737.50**.

### Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$950.00 as indicated above. The landlord has been authorized to retain the tenant's full security deposit including \$0.00 in interest of \$212.50 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$737.50. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 10, 2018

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Residential Tenancy Branch