



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPR MNR FF MNSD MNDC

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on January 2, 2018. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

1. an order of possession for unpaid rent or utilities;
2. a monetary order for unpaid rent or utilities;
3. 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;
4. a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and,
5. to recover the filing fee from the tenant for the cost of this application.

The landlord attended the hearing and provided affirmed testimony. The tenant did not attend the hearing. The landlord testified that she gave the Notice of Hearing package to the tenant, in person, on October 17, 2017. I find the tenant received this package on that day.

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.

Next, I note that the Tenant has not yet vacated the rental unit. As such, the Landlord's claim for monetary compensation for damage to the rental unit, and to keep the security deposit, is premature. As such, I dismiss, with leave, the 3<sup>rd</sup> and 4<sup>th</sup> grounds above. The Landlord is at liberty to reapply for these matters, once the tenancy has ended.

The landlord is requesting 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.

In consideration of this, I allow the her to amend her application to include rent that has accrued since the original application date.

Issue(s) 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 recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlord testified that monthly rent is \$700.00, and is due on the first of the month.

The Landlord testified that she served the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) by posting it to the door of the rental unit on October 6, 2017. The amount owing at that time was \$8,600.00. The Landlord provided oral testimony and documentary evidence with respect to rent payments and accruals. This evidence is summarized as follows:

Date	Item	Amount Due (\$)	Amount Paid (\$)	Accrued Balance Owing (\$)
October 1, 2016	Rent Due	700.00	500.00	200.00
November 1, 2016	Rent Due	700.00		900.00
December 1, 2016	Rent Due	700.00		1,600.00
January 1, 2017	Rent Due	700.00		2,300.00
February 1, 2017	Rent Due	700.00		3,000.00
March 1, 2017	Rent Due	700.00		3,700.00

April 1, 2017	Rent Due	700.00	4,400.00
May 1, 2017	Rent Due	700.00	5,100.00
June 1, 2017	Rent Due	700.00	5,800.00
July 1, 2017	Rent Due	700.00	6,500.00
August 1, 2017	Rent Due	700.00	7,200.00
September 1, 2017	Rent Due	700.00	7,900.00
October 1, 2017	Rent Due	700.00	8,600.00
November 1, 2017	Rent Due	700.00	9,300.00
December 1, 2017	Rent Due	700.00	10,000.00
January 1, 2018	Rent Due	700.00	10,700.00
<b>Total Accrued Balance (\$)</b>			<b>10,700.00</b>

The Landlord stated that the Tenant has not paid any rent for well over a year, and continues to live in the unit.

### Analysis

Based on the 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*.

In this case, I find that the tenant owed \$8,600.00 in past due rent at the time the Notice was issued on October 6, 2017. The landlord issued the Notice by posting it to the door of the rental unit on October 6, 2017, and I find the tenant received Notice on October 9, 2017, 3 days after it was posted, pursuant to section 90 of the *Act*.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence that the Tenant did either. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. 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. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence before me to demonstrate that the tenant owes and has failed to pay \$10,700.00 in past due rent.

Further, 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 successful in this hearing, I also order the tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution. In summary, I find the Landlord is entitled to a monetary order in the amount of \$10,800.00.

### Conclusion

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 **\$10,800.00**. 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: January 02, 2018

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Residential Tenancy Branch