



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes OPR MNR FF MT CNR FF

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide submissions and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

At the outset of the hearing, the tenant advised that she had secured alternative accommodation effective January 1, 2018 and that she was just in the process of vacating the rental unit. The tenant advised that she was no longer pursuing her application to cancel the 10 Day Notice and agreed the landlord could be issued an order of possession effective two days from date of service.

### Preliminary Issue – Amendment to Landlord’s Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent for the months of November 2017, December 2017 and January 2018. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord’s request for an amendment.

### Issues

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?

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

### Background and Evidence

The tenancy began on June 1, 2017 with a monthly rent of \$800.00 plus \$30.00 for water payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy which the landlord continues to hold.

The parties agreed that \$330.00 was outstanding for October 2017, \$830.00 was outstanding for November 2017 and \$830.00 was outstanding for December 2017.

In addition to the above, the landlord was claiming loss of rent for the month of January 2018 as the tenant had not yet vacated the rental unit as of the hearing date, January 3, 2018.

The tenant argued the landlord should easily be able to re-rent the unit given the current rental market conditions in the area of dispute.

### Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

As the tenant advised that she is no longer pursuing her application to cancel the 10 Day Notice, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

The parties agreed that a total of \$1990.00 in rent plus water was outstanding up to December 31, 2017 so the landlord is awarded this amount.

For the month of January 2018, I accept the landlord's claim that as the tenant had not yet vacated the rental unit, the landlord will suffer a loss of rent for this entire month. I find that on a balance of probabilities that it would be unlikely the landlord is able to advertise the rental unit

and secure a suitable tenant willing to take possession of the rental unit prior to February 1, 2018. The landlord is awarded \$800.00 for loss of rent for the month of January 2018.

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 for a total monetary award of \$2890.00 (1990.00 + 800.00 + 100.00).

The landlord continues to hold a security deposit of \$400.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$2490.00.

On a final note, as the tenant was not successful in this application, I find that the tenant is not entitled to recover the 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. 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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2490.00. 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 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 03, 2018

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Residential Tenancy Branch