



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WEST 56 APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF, CNE

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence in person on December 20, 2017. The landlord's agent, J.S. attended the conference call hearing and provided undisputed affirmed testimony that she was present when the notice of hearing package and the submitted documentary evidence were served to the tenant in person on December 20, 2017. I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served as per sections 88 and 89 of the Act.

At 17 minutes past the start of the scheduled hearing time, the tenant's application was dismissed. The landlord confirmed that the tenant had served the landlord with his notice of hearing package and was aware of the tenant's issues.

Rule 7 of the Rules of Procedure provides that:

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.2 Delay in the start of a hearing**

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

**7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenant and in the absence of the tenant's participation in this hearing, I order the application dismissed with leave to reapply. Both the landlord and the tenant failed to provide a copy of the 1 Month Notice. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation periods.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced

here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The landlord provided undisputed testimony that no signed tenancy agreement was made, but that as part of the tenant's employment as seen in the submitted copy of the Landlord's Offer of Employment, this tenancy began on January 1, 2016 that as part of his employment living accommodations were provided at #308 in which rent was subsidized at \$800.00 per month. The landlord claimed that regular market rent calculated based upon the similar units in the building surrounding the tenant would be \$1,275.00.

The landlord provided undisputed evidence that the tenant was served with the 10 Day Notice dated December 5, 2017 in person with a witness on December 5, 2017. The 10 Day Notice sets out that the tenant failed to pay rent of \$800.00 that was due on the 1<sup>st</sup> day of December, 2017 and provides for an effective end of tenancy date of December 15, 2017. The landlord has submitted a completed copy of a 10 Day Notice - Proof of Service Document as confirmation of service.

The landlord stated that as of the date of the hearing the tenant has not paid any rent and is in arrears for:

\$800.00	December 2017, Unpaid Subsidized Rent
\$1,275.00	January 2018, Unpaid Market Rent
\$1,275.00	February 2018, Unpaid Market Rent

The landlord seeks a total monetary claim of \$3,400.00. The landlord provided affirmed testimony that the tenant's employment ended in December 2017 as such is no longer entitled to subsidized rent of \$800.00 for January and February 2018. The landlord also seeks \$25.00 for a late rent fee for December 2017 and a \$25.00 NSF Charge. During the hearing the landlord clarified that no signed tenancy agreement was made and there were no provisions for a late rent fee. The landlord also clarified that there was no NSF charge incurred from the bank, but that this claim was for administrative purposes.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of the landlord and find that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice dated December 5, 2017. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 15, 2017. As that has not occurred, I find that the landlord entitled to a two-day order of possession.

The landlord applied for a total of \$3,400.00 and I find that the landlord has established a claim for:

Unpaid Subsidized Rent	\$800.00 December 2017
Unpaid Subsidized Rent	\$800.00 January 2018
Unpaid Subsidized Rent	\$800.00 February 2018

I find that the landlord is not entitled to market rent of \$1,275.00 per month. I also find that the landlord is not entitled to a late rent fee of \$25.00 nor the \$25.00 NSF charge.

Although the tenant failed to pay rent, there is no signed tenancy agreement and the only reference to monthly rent is in the offer of employment provided by the landlord. There are no provisions outlined to the tenant in any form regarding fee(s) and by the landlord's own direct testimony no NSF charge was incurred.

The landlord has established a total monetary claim of \$2,400.00 for unpaid rent.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$2,500.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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: February 14, 2018

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Residential Tenancy Branch