



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

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

The landlord and his 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 provided affirmed testimony that the tenant was served with the notice of hearing package in person on January 18, 2018. I accept the undisputed affirmed testimony of the landlord and find that the tenant was personally served with the notice of hearing package and the submitted documentary evidence in person on January 18, 2018 as per sections 88 and 89 of the Act.

During the hearing the landlord clarified that the monetary claim for unpaid rent of \$850.00 and not \$855.00 due to a clerical error.

### 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 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 applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed testimony that there was not a signed tenancy agreement, but did not provide it details of a verbal agreement made when the tenancy began in

May of 2017 on a month-to-month basis. The monthly rent was \$650.00 due within the 1<sup>st</sup> week of the month. A security deposit of \$250.00 was paid.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$850.00, which consist of rental arrears which include \$200.00 from December 2017 and \$650.00 from January 2018 rent.

The landlord issued the 10 Day Notice dated January 6, 2018 to the tenant in person on the same date. The 10 Day Notice sets out an effective date of January 16, 2018. The 10 Day Notice set out that the tenant failed to pay \$650.00 in rent that was due on January 5, 2018. The landlord states that as of the date of this hearing the tenant still occupies the rental premises and has not paid any rent February 2017.

In support of these claims the landlord has provided:

- Photograph of a 10 Day Notice dated January 6, 2018.

- Photograph of an online E-Transfer for \$450.00. It notes a withheld amount of \$200.00 for cable services.

- A copy of a titled "Tenancy Agreement" which when reviewed is the application for dispute and the notice of a dispute resolution hearing.

- Photograph of a text message, re: a party paying rent.

### 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 that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice dated January 6, 2018. 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 January 16, 2018. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided undisputed affirmed testimony that the tenant has unpaid rental arrears totaling \$850.00 for December 2017 and January 2018. The landlord also provided undisputed affirmed testimony that the tenant still occupies the rental premises and has not paid any rent for February 2018. I find that the landlord has proven his entitlement to the rent arrears of \$850.00. I also find that as the tenant still occupies the rental premises, the landlord is also entitled to unpaid rent/loss of rental income for February 2018. The landlord is entitled to a monetary order for the unpaid rent/loss of rental income of \$1,500.00.

The landlord testified that he continued to hold the tenant's \$250.00 security deposit paid in May 2017. Over that period, no interest is payable. 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.

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.

The landlord has established a total monetary order for \$1,350.00.

### Conclusion

The landlord is granted an order of possession for unpaid rent.

The landlord is granted a monetary order of \$1,350.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, these 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 06, 2018

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Residential Tenancy Branch