



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, MNDCL-S, MNRL-S, OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking retention of the Tenant’s security deposit, an Order of Possession, and a Monetary Order for unpaid rent, damage or loss, or money owed.

The hearing was convened by telephone conference call and was attended by two agents for the Landlord (the “Agents”), who provided affirmed testimony. The Tenant did not attend. The Agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondents must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agents testified that the Application and Notice of Hearing were sent to the Tenant at the rental unit by registered mail on January 5, 2018, and provided a print out from the mail provider indicating that the item was accepted at the post office on January 5, 2018 and sent for delivery January 8, 2018. As a result, I find that the Tenant was deemed served with the Application and Notice of Hearing on January 10, 2018, five days after they were sent by registered mail.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Agents, copies of the decision and any order issued in favor of the Landlord will be e-mailed to the e-mail address provided in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Landlord entitled to a Monetary Order, recovery of the filing fee, and to retain the Tenant's security deposit pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the Tenant resides in a subsidized housing complex where the amount of their monthly rent contribution is based on their income. The tenancy agreement indicates that the tenancy began on April 1, 2016, and that rent in the amount of \$259.00 is due on the first day of each month. The tenancy agreement also indicates that a security deposit in the amount of \$350.00 was paid by the Tenant, which the Landlord still holds. The Agent testified that based on the Tenant's most recent income verification, their rent was reduced and is currently \$208.00 per month.

The Agents testified that when the Tenant failed to pay the rent as required, a 10 Day Notice was posted to the door of the Tenant's rental unit on December 13, 2017, in the presence of a witness. The Agents submitted a witnessed and signed Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (the "Proof of Service") in support of their testimony.

The 10 Day Notice in the documentary evidence before me, dated December 13, 2017, has an effective vacancy date of December 23, 2017, and states that as of December 1, 2017, the Tenant owed \$208.00 in outstanding rent.

The Agents testified that since the 10 Day Notice was served, the Tenant has only made one payment in the amount of \$300.00 on January 8, 2018. As a result, the Agents testified that the Tenant currently owes \$532.00 in outstanding rent for January, February and March, 2018.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

**Landlord's notice: non-payment of rent**

**46 (1)** A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

**46 (4)** Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

**(5)** If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was deemed served with the 10 Day Notice on December 16, 2017, three days after it was attached to the door of their rental unit. Based on the above, the effective date of the 10 Day Notice, December 23, 2017, does not comply with the required notice period under section 46(1) of the *Act*. As a result, I find that the incorrect effective date is automatically corrected to December 26, 2017, pursuant to section 53 of the *Act*.

As there is no evidence before me to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period. Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, December 26, 2017, and the Landlord is therefore, entitled to an Order of Possession. As the corrected effective date of the 10 Day Notice has passed, and the Tenant currently owes rent for January, February, and March, 2018, the Order of Possession will be effective two days after service on the Tenant.

Based on the undisputed testimony and documentary evidence from the Agents, I also find that the Tenant owes \$532.00 in outstanding rent. Pursuant to section 72 of the *Act*, the Landlord is therefore entitled to the recovery of the \$100.00 filing fee and to retain, in full, the \$350.00 security deposit paid by the Tenant in partial satisfaction of the above noted debts. As a result, the Landlord is entitled to a Monetary Order in the amount of \$282.00; \$532.00 in outstanding rent, plus the \$100.00 filing fee, less the \$350.00 security deposit.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$282.00. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. 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: March 9, 2018

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Residential Tenancy Branch