



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RE/MAX OF NANAIMO PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **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 its filing fee for this application from the tenant 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 amendment to an application for dispute resolution by Canada Post Registered Mail on January 12, 2018. The landlord clarified that the package was returned by Canada Post as "unclaimed" after attempts at service were made. The landlord provided in his direct testimony the Canada Post Customer Receipt Tracking number noted on the style of cause of this decision. 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. Although the tenant failed to claim the properly served package, I find that the tenant has been sufficiently served as per section 90 of the Act.

### Preliminary Issue

At the outset, the named landlord, RE/MAX OF NANAIMO PROPERTY MANAGEMENT'S Agent, G.L. confirmed that they were acting on behalf of the named landlord on the signed tenancy agreement X.Y.L. As such, the landlord's application for dispute and any subsequent documents shall be amended to reflect the actual landlord's name as per the signed tenancy agreement.

At the outset the landlord clarified that possession was no longer required as the landlord considers the rental property abandoned on February 8, 2018 in which the tenant vacated the rental unit leaving his personal belongings. The landlord confirmed that the locks were changed

and that the landlord now has possession of the unit. As such, the landlord's request for an order of possession was cancelled at the request of the landlord. The hearing proceeded on the landlord's monetary claim only.

Issue(s) to be Decided

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 affirmed testimony that this tenancy began on October 1, 2017 on a fixed term tenancy ending on September 30, 2018. The monthly rent was \$1,700.00 payable on the 1<sup>st</sup> day of each and a security deposit of \$850.00 was paid on September 29, 2017.

The landlord seeks a monetary claim of \$6,900.00 which consists of:

\$1,700.00	Unpaid Rent, December 2017
\$1,700.00	Unpaid Rent, January 2018
\$1,700.00	Unpaid Rent, February 2018
\$1,700.00	Unpaid Rent, March 2018
\$100.00	Late Rent Fee(s), \$25.00 X 4 months

The landlord claims that the tenant was served with a 10 Day Notice dated December 11, 2017 by posting it to the rental unit door on December 11, 2017 with a witness as shown by the completed proof of service document dated December 11, 2017. The landlord claims that as of the date of this hearing no rent was paid since the 10 Day Notice dated December 1, 2017 was served.

The landlord clarified that there are no conditions in the signed tenancy agreement providing for a late rent fee of \$25.00. As such, the landlord requested that this portion of the claim be cancelled.

The landlord clarified that since possession was regained on February 8, 2018 when it was determined that the tenant had vacated the rental unit, no action has been made to mitigate the loss of rent. The landlord stated that the tenant had abandoned the rental unit leaving many of his belongings in the unit. The landlord stated that the rental unit was left as is pending the outcome of this hearing has not attempted to re-rent the unit, although the landlord stated that it was being advertised for rent.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the landlord's undisputed affirmed evidence that the tenant was served with the 10 Day Notice dated December 11, 2017 by posting it to the rental unit door on December 11, 2017. I also accept the undisputed evidence of the landlord that no rent has been paid since the 10 Day Notice was served. As such, I find that the landlord has established a claim for unpaid rent for December 2017 (\$1,700.00), January 2018 (\$1,700.00) and February 2018 (\$1,700.00) for total of \$5,100.00.

As for the landlord's claim for unpaid rent of \$1,700.00 for March 2018, I decline to award. The landlord provided undisputed evidence that possession was obtained on February 8, 2018 when he determined that the rental unit was abandoned by the tenant and the landlord has re-asserted possession of the rental unit. The landlord further stated that the rental unit was left as is with the tenant's personal belongings and claims this as storage until the hearing.

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize Loss states in part,

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss<sup>1</sup>. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation<sup>2</sup>. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

In this case, the landlord had clarified during the hearing that no efforts were made to re-rent the unit as it was being used as storage to hold all of the tenant's personal belongings abandoned. I find that in this case that the landlord failed to mitigate this loss by removing the items as abandoned items for storage and attempting to re-rent the premises. As such, the landlord's claim for recovery of unpaid rent of \$1,700.00 for March 2018 is dismissed.

The landlord requested the cancellation for recovery of the \$100.00 in late rent fee(s) and as such no further action is required for this portion of the claim.

The landlord has established a total monetary claim of \$5,100.00 in unpaid rent. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

#### Conclusion

The landlord is granted a monetary order for \$5,200.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 08, 2018

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Residential Tenancy Branch