



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSIDE TOWERS APARTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR OPRM-DR FFL

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord initially applied for a Direct Request (ex-parte) application for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; and authorization to recover the filing fee for this application pursuant to section 72. When the tenant applied to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46 of the Act, both applications were scheduled for a participatory hearing.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant was assisted by an advocate and the landlord was also assisted at this hearing. The tenant confirmed receipt of a 10 Day Notice for Unpaid Rent ("10 Day Notice") personally served by the landlord on January 4, 2018. The landlord also testified that he issued subsequent 10 Day Notices on February 1, 2018 and March 1, 2018. Both parties confirmed receipt of the other's Application for Dispute Resolution packages and evidentiary submissions for this hearing. The tenant confirmed receipt of the landlord's Amendment Application increasing the amount of unpaid rent amount sought by the landlord. I find that both parties were sufficiently served with the materials for this hearing.

### Issue(s) to be Decided

Should the landlord's 10 Day Notice to End Tenancy be cancelled or is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent totalling \$2684.00?

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

### Background and Evidence

The residential tenancy agreement submitted as evidence at this hearing indicates that the tenancy began on September 1, 2017 as a one year fixed term tenancy scheduled to end August 2018. The residential tenancy agreement included a clause, initialled by both parties that the tenant would vacate the rental unit. The rental amount of \$1342.00 is payable on the first of each month. The landlord provided undisputed testimony that the tenant has not paid rent since December 2017. The tenant, present at this hearing, did not dispute the landlord's testimony that she has failed to pay rent for January 2018, February 2018 or March 2018. The landlord continues to hold a \$547.50 security deposit provided by the tenant prior to the outset of this tenancy.

The landlord sought an Order of Possession for Unpaid Rent based on the tenant's failure to pay rent in January 2018, February 2018 and March 2018. The landlord testified that he personally served a 10 Day Notice to the tenant on January 4, 2018. He provided undisputed testimony that the tenant failed to pay \$1342.00 in January 2018 rent after the issuance of the 10 Day Notice on January 4, 2018. He also provided undisputed testimony that the tenant did not pay rent for February 2018 or March 2018. He provided undisputed testimony that the tenant has not paid the 3 months' outstanding rental arrears as of the date of this hearing.

The tenant testified that she receives a disability income and has been unable to secure work to supplement this income. She testified that she was able to pay rent for her first year and 3 months of her tenancy as a result of the sale of her home. She testified that, while she has been making efforts to find work and assistance with the payment of her rent, she has, to date, been unable to do so. Her advocate testified that the tenant has secured temporary housing that will be available to her as of March 15, 2018.

Before the conclusion of this hearing, as of a result of the submissions by the tenant and her undertaking to vacate the rental unit on March 15, 2018, he agreed to this date for the tenant's end of tenancy and move-out. With this conversation, the tenant and landlord were able to achieve a resolution of the portion of their dispute relating to the end of the tenancy. However, the parties were unable to agree on an amount of rental arrears that the tenant should be required to pay and any timeline for re-payment of the rental arrears.

With respect to any rental arrears, the tenant and landlord agreed that the rental amount of \$1342.00 was payable monthly on the 1<sup>st</sup> of each month. The tenant and landlord agreed that the tenant had not paid rent for the months of January, February and March

2018 as of the date of this hearing. The parties agreed that the tenant would vacate the rental unit on March 15, 2018. The landlord stated that, as a result of the agreed-upon move-out date, he would accept 50% of the rental payment for March 2018.

### Analysis

The tenant applied pursuant to section 46(4) of the *Act* to dispute the landlord's 10 Day Notice issued January 4, 2018. However, at this hearing, the tenant did not dispute that she had failed to pay rent for January 2018, February 2018 and March 2018. Section 26(1) of the *Act* establishes 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." The tenant provided an explanation for her financial hardship. The undisputed evidence at this hearing is the tenant did not pay her outstanding rent and, as of the date of this hearing, continues to be unable to pay her outstanding rent.

In accordance with section 46(5) of the *Act*, the tenant has failed to pay the outstanding January 2018 rent within 5 days of the landlord's issuance of the 10 Day Notice. As the tenant has provided insufficient support for her application that the landlord's notice to end tenancy should be cancelled, the tenancy ended on the corrected effective date of the notice: January 17, 2018. As the tenant continues to reside in the rental unit and as the tenant testified that she will vacate the premises as of March 15, 2018, I find that the landlord is entitled to a 2 day Order of Possession.

The landlord's calculation of the tenant's rental arrears were not disputed by the tenant. She testified that she has been unable to pay the January 2018, February 2018 and March 2018 rent. As the tenant intends to vacate the rental unit as of March 15, 2018, I find that the landlord is entitled to a monetary order as follows,

<b>Rent Arrears Owed by Tenant</b>	<b>Amount</b>
Unpaid Rent – January 2018	\$1342.00
Unpaid Rent – February 2018	1342.00
Unpaid Rent - March 2018	671.00
<b>Total Rental Arrears to Landlord</b>	<b>\$3355.00</b>

Pursuant to section 72 of the *Act*, I find that the landlord is entitled to retain the tenant's security deposit towards the rental arrears owed.

In the circumstances, as the landlord was successful in his application, I find that the landlord is entitled to recover the filing fee for this application.

### Conclusion

In order to enforce the agreement between the landlord and the tenant regarding a date to vacate the rental unit, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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.

I grant the landlord a monetary order as follows,

<b>Item</b>	<b>Amount</b>
Unpaid Rent – January 2018	\$1342.00
Unpaid Rent – February 2018	1342.00
Unpaid Rent - March 2018	671.00
Less Security Deposit	-547.50
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$2907.50</b>

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 26, 2018

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Residential Tenancy Branch