



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OPR MNR FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The 10 Day Notice to End Tenancy is dated January 5, 2018 to be effective January 19, 2018 and the landlord provided evidence it was served personally on the tenant on January 5, 2018 and also posted on her door and the Application for Dispute Resolution was served by registered mail. I find the documents were legally served pursuant to sections 88 and 89 for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain an Order of Possession pursuant to section 46;
- b) For a monetary order for rent owing;
- c) To retain the security and pet damage deposits to offset the amount owing; and
- d) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 46 and they are entitled to an Order of Possession? Is the landlord entitled to a monetary order for unpaid rent and to recover the filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced February 1, 2016, it is now a month to month tenancy, rent is \$375 a month and a security deposit of \$187.50 and pet damage deposit of \$50 were paid.

The landlord provided evidence that after the tenant was served the Notice to End Tenancy stating there was \$375 of unpaid rent for January 2018, she paid \$40 on January 11, \$325 on January 15 and \$10 on January 29. In each case, the landlord gave her receipts stating it was accepted "for use and occupancy only and not to

reinstate the tenancy". Copies of all the subsequent rent receipts were provided in evidence.

The tenant contended that the receipts she received did not have the limitation "for use and occupancy only". She had not provided her copies in evidence. The landlord said they had the originals in their book and all the receipts read as they stated. The tenant said she had been a good tenant with rent only late twice, she got along well with staff and it is very hard for her to get a new place in the city and she has a cat. She asked that her tenancy be continued. The landlord said they had legally ended the tenancy, they had advised the tenant also by letter so she would have time to look for another place and the relationship with her had "gone sideways" in the last 6 months. To give her some time to move, the landlord requested the Order of Possession be effective April 1, 2018.

Currently the tenant owes rent for March 2018 of \$375. They chose not to accept it this month as the tenancy had ended but request a monetary order for this amount less the deposits.

In evidence is the Notice to End Tenancy, proofs of service, the rental ledger, lease and copies of rent receipts saying "for use and occupancy only".

**Analysis:**

Section 46 of the Act provides a landlord may end a tenancy if there rent is owed. I find section 46(4) states a tenant has 5 days to pay the rent or dispute the Notice to End Tenancy. If they do not pay or file an application to dispute within this time, I find section 46(5) provides they are conclusively presumed to have accepted the end of the tenancy on the date set out on the notice and must vacate the rental unit by that date. I find the tenant did not pay the unpaid rent within the 5 days allowed or file an application to dispute so her tenancy legally ended on January 19, 2018. I find the landlord entitled to an Order of Possession effective April 1, 2018 as requested.

I find the weight of the evidence supports the landlord's submissions that rent accepted subsequent to January 5, 2018 did not reinstate the tenancy as they limited acceptance by writing "for use and occupancy only" on the receipts given to the tenant. I find the landlord's evidence credible and prefer it to the evidence of the tenant. Although she said the receipts in evidence were falsified, I find she provided insufficient evidence to support her statement. I find insufficient evidence to support her statement that the landlord was biased. I find the landlord proceeded within their legal rights under the Act.

I find the landlord also entitled to a monetary order for \$375 for over-holding rent.

**Conclusion:**

I find the landlord entitled to an Order of Possession effective April 1, 2018 and to a monetary order as calculated below. I find the landlord entitled to recover their filing fee for the application and to retain the security and pet damage deposits to offset the amount owing.

Over-holding rent March 2018	375.00
Filing fee	100.00
Less security & pet deposits (187.50+50)	-237.50
<b>Total Monetary Order to Landlord</b>	<b>237.50</b>

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 14, 2018

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Residential Tenancy Branch