



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR DR FF

### Introduction

This participatory hearing was convened after the issuance of a January 16, 2018 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

The landlord, W.C. attended the hearing, while the tenants did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Following opening remarks, the landlord said that the tenants had vacated the rental unit on approximately February 15, 2018 and that he no longer required an Order of Possession.

On January 14, 2018, the tenants were individually sent Notice of Hearing documents by way of Canada Post Registered Mail. The landlord provided a copy of the Canada Post tracking numbers to the hearing documents. Pursuant to sections 88 and 90 of the *Act*, the tenants are deemed to have been served with these documents on January 18, 2018.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

### Background and Evidence

The tenancy in question began in 2002 when the landlord purchased the rental building. The landlord explained that the tenant was already in occupation of the rental unit at the time of purchase. Rent at the outset of the tenancy was \$1,100.00 and rose to its current levels of \$1,586.61. This was a month to month tenancy and a security deposit of \$550.00 continues to be held by the landlord.

The landlord gave undisputed testimony that his application for Direct Request was reconvened to a participatory hearing because an Adjudicator determined that, "I find that the landlord named in the residential tenancy agreement has been modified to reflect a new landlord; however, those modifications have not been initialed by Tenant J.L, the tenant that signed the tenancy agreement. Accordingly, I am not able to confirm the validity of the modifications to the tenancy agreement through the direct request process."

The landlord explained that he was the only landlord and did not understand why his application had not been accepted. I explained that he had applied via the Direct Request process, and that the requirements were different than those of the hearing. The landlord said that a 10 Day Notice was served on the tenant January 2, 2018 because rent for January 2018 was not paid on the day it was due. The landlord is seeking a monetary award in reflection of this outstanding 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, the onus is on the landlord to prove his entitlement to his claim for a monetary award.

After considering the testimony of the landlord and reviewing the evidence and notice of rental increases submitted to the hearing, I am satisfied that the tenants were aware

that rent of \$1,586.61 was outstanding. Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a Monetary Order of \$1,586.61 for unpaid rent. At the hearing, the landlord explained that he continued to hold a security deposit of \$550.00. Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit to be put against the unpaid rent. As the landlord was successful he may recover the filing fee.

### Conclusion

The landlord's application for an Order of Possession is dismissed with leave to reapply.

I make a Monetary Order of \$1,136.61 in favour of the landlord as follows:

Item	Amount
Unpaid Rent January 2018	\$1,586.61
Less Security Deposit	<b>(-550.00)</b>
Return of Filing Fee	<b>100.00</b>
<b>Total =</b>	<b>\$1,136.61</b>

The landlord is provided with a formal Order in the above terms. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

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 6, 2018

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Residential Tenancy Branch