



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **Landlord:**    OPRM-DR FFL  
                             **Tenant:**        CNR, AAT, PSF

### Introduction

This hearing dealt with applications by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

The landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to cross examine one another and to make submissions.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged that they received a copy of the Landlord's Application for Dispute Resolution (Landlord's Application) while the landlord acknowledged receiving the Tenant's Application for Dispute Resolution (Tenant's Application). Pursuant to section 89 of the *Act*, I find that both parties are found to have been duly served with the applications.

The landlord testified that she provided an evidence package to the tenant by registered mail on January 07, 2018. The tenant confirmed that they received this evidence package. In accordance with section 88 of the Act, I find the tenant was duly served with the landlord's first evidence package.

The landlord testified that she posted a second evidence package to the door of the rental unit on January 18, 2018. The tenant confirmed receiving the second evidence package. In accordance with section 88 of the Act, I find the tenant is duly served with the second evidence package.

The tenant testified that they served the landlord with their evidence by e-mail. The landlord confirmed that they received this evidence. In accordance with section 71 of the Act, which allows an Arbitrator to consider a document not served in accordance with section 88 of the Act to be sufficiently served for the purposes of the Act, I find the landlord is duly served with the tenant's evidence.

The tenant acknowledged receipt of the 10 Day Notice, which was posted to the tenant's door on January 18, 2018. In accordance with sections 88 of the Act, I find the tenant was duly served with the 10 Day Notice on January 21, 2018.

The landlord testified that the tenant is still in the rental unit and has not made any payments to the landlord since the 10 Day Notice was issued. At the outset of the hearing the landlord sought to increase their monetary claim from \$1,150.00 to \$2,972.00 to reflect the tenants' failure to pay \$1,150.00 in monthly rent for February 2018, the additional month of unpaid rent accrued while waiting for this hearing, and \$672.30 in unpaid rent owing for December 2017.

Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I allow the amendment for February 2018 as this was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application for Dispute Resolution. I do not allow the amendment for unpaid rent owing for December 2017 as the tenant did not know that the unpaid rent owing for that month would be addressed at this hearing and I find they would be prejudiced by this requested amendment.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

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

Is the tenant entitled to the remedies under the Act that they are seeking on their Tenant's Application?

Background and Evidence

A copy of the tenancy agreement signed between the landlord and the tenant was provided that indicate this tenancy began on March 01, 2017, with a monthly rent of \$1,150.00 due on the first day of the month. The landlord testified that she continues to retain a security deposit in the amount of \$575.00.

A copy of the signed 10 Day Notice, dated January 18, 2018, for \$1,822.00 in unpaid rent with an effective date of January 31, 2018, was included in the landlord's and the tenant's evidence.

The landlord testified that the tenant has not paid the monthly rent for January 2018 and February 2018 in the amount of \$1,150.00 per month. The landlord stated that they are seeking an Order of Possession and a Monetary Order for the unpaid rent owing for these months.

The tenant testified that she has not paid the monthly rent for January 2018 and February 2018 but that there is a cheque that is in the mail from the Ministry of Social Development for the landlord which will include March 2018 rent as well.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 46 of the *Act* requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found the 10 Day Notice was duly served to the tenant on January 21, 2018, I find the tenant had until January 26, 2018, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I find the tenant submitted their Application on January 25, 2018, within the five day time limit permitted under section 46 (4) the Act; however, based on the tenant's testimony, I find the tenant has confirmed that they did not pay the monthly rent within the five days allowed by the Act or provide any evidence that had any legal authority under the Act to withhold any rent. For the above reasons, I dismiss the Tenant's Application to cancel the landlord's 10 day Notice, without leave to reapply.

Section 55(1) of the Act reads as follows:

*If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find the 10 Day Notice complies with section 52 of the Act. Based on my decision to dismiss the tenant's application for dispute resolution and in accordance with section 55(1) of the Act, I find the landlord is entitled to a two (2) day Order of Possession.

As this tenancy is ending I find the remaining claims on the Tenant's Application are no longer applicable to the tenant and I dismiss them in their entirety, without leave to reapply.

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. As the tenant has confirmed that they have not paid the monthly rent to the landlord for January 2018 and February 2018, I find the landlord is entitled to a monetary award in the amount of \$2,300.00 for unpaid rent owing for these months.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord has been successful in their Landlord's Application, I allow her to recover the filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenant's security deposit and to recover the filing fee for this application from the tenant.

Item	Amount
Unpaid January 2018 Rent	\$1,150.00
Unpaid February 2018 Rent	1,150.00
Less Security Deposit	-575.00
Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1,825.00</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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