



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPM OPR MNR FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on March 9, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a mutual agreement to end tenancy
- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord, K.M., attended the hearing and provided affirmed testimony. The Tenant did not attend the hearing.

The Landlord testified that he sent the Notice of Hearing to the Tenant on January 15, 2018, by registered mail. I find the Tenant received this package on January 20, 2018, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*. This application was made in order to get an order of possession based on a mutual agreement to end tenancy.

Further, the Landlord made an amendment to his initial application and served this amendment to the Tenant by registered mail on February 3, 2018. This amendment indicated that the Landlord was also seeking an order of possession based on non-payment of rent, and was also seeking to recover the unpaid rent. I allow the Landlord's amendment and find the Tenant was served with this amendment on February 8, 2018, the fifth day after it was mailed, pursuant to section 90 of the *Act*.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to an order of possession based on a mutual agreement to end tenancy or based on a 10 Day Notice to End Tenancy?

- Is the Landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

According to the Landlord's testimony in the hearing, current rent is \$850.00 and is due on the first of the month.

The Landlord provided a copy of a mutual agreement to end tenancy (the "agreement"), dated November 30, 2017. The agreement specifies that the Tenant agreed to vacate the rental unit by 10:00 pm on December 31, 2017. Both the Landlord and the Tenant signed this written agreement. The Landlord stated that he personally served the Tenant with a copy of this agreement on the same day he signed it, November 30, 2017.

The Landlord stated that the Tenant did not move out as agreed and he now wants an order of possession. The Landlord further stated that the Tenant has missed several rent payments. The Landlord stated that the Tenant has paid some partial payments but still owes the following in rent:

- October 2017 - \$850.00
- December 2017 - \$125.00
- January 2018 - \$850.00
- February 2018 - \$850.00
- March 2018 - \$850.00
- **Total rent owed: \$3,525.00**

### Analysis

Section 44 of the Act allows for a tenancy to end by mutual agreement of the parties to the tenancy as long as the agreement is in writing.

Based on the undisputed testimony and documentary evidence, and on a balance of probabilities, I find there is sufficient evidence to demonstrate that the parties entered into a mutual agreement to end the tenancy, effective December 31, 2017. I accept the Landlord's undisputed submissions that the Tenant continues to occupy the rental unit, as of the date of this hearing.

I find the Landlord is entitled to an order of possession based on the mutual agreement to end tenancy. This order of possession will be effective two (2) days after it is served on the Tenant.

With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the Landlord's documentary evidence and testimony before me (as

summarized above) to demonstrate that the Tenant owes and has failed to pay \$3,525.00 in rent as of the time of this hearing.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I order the Tenant to repay the \$100.

In summary, I find the Landlord is entitled to a monetary order in the amount of \$3,625.00

Given my findings thus far, it is not necessary to consider the Landlord's request for an order of possession based on the 10 Day Notice.

### Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,625.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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 12, 2018

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Residential Tenancy Branch