



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR MNDC FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord and an agent for the landlord ("agent") attended the teleconference hearing. During the hearing the landlord and agent were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by personal service on January 17, 2018 in the afternoon at the rental unit and that the tenant accepted the paperwork from the agent. The agent stated that her daughter JE was also present when the agent served the tenant. Based on the above and without any evidence before me to prove to the contrary, I accept that the tenant was personally served with the Notice of Hearing, application and documentary evidence on January 17, 2018 at the rental unit address. As the tenant did not attend the hearing, I find that this matter to be unopposed by the tenant.

### Preliminary and Procedural Matters

The landlord confirmed her email address at the outset of the hearing. The landlord confirmed their understanding that the decision would be emailed to the landlord and sent by regular mail to the tenant.

The landlord testified that in addition to the rent owed for January and February of 2018 that the tenant continues to occupy the rental unit by having a snake in an enclosure in the rental unit and his personal belongings and as a result, is seeking loss of March 2018 rent also of \$1,000.00. I find this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement, I amend the application from \$2,000.00 to \$3,000.00 which consists of \$1,000.00 per month of unpaid rent for January 2018 and loss of rent for the months of February and March of 2018.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

The landlord testified that a fixed term tenancy between the parties began on November 10, 2017 and was scheduled to revert to a month to month tenancy after May 10, 2018. The landlord stated that monthly rent in the amount \$1,000.00 was due on the first day of each month and that the tenant paid a \$500.00 security deposit at the start of the tenancy, which the landlord continues to hold. The landlord confirmed that while a written tenancy agreement exists between the parties, the written tenancy agreement was not submitted in evidence.

The landlord applied for dispute resolution on January 17, 2018, after a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 5, 2018 ("10 Day Notice") was served on tenant on January 5, 2018. The agent stated that the tenant was served personally at the rental unit and was accepted by the tenant. The 10 Day Notice indicates that \$1,000.00 was owed in rent as of January 1, 2018. The landlord stated that the tenant continues to occupy the rental unit and has not paid any rent for January 2018 and that the landlord has suffered a loss of rent for February and March of 2018.

The landlord testified that the tenant did not dispute the 10 Day Notice of pay any rent owed. The effective vacancy date listed on the 10 Day Notice is January 15, 2018.

The landlord is seeking a monetary claim in the amount of \$3,100.00 comprised of the following:

Item Description	Amount
1. Unpaid rent for January 2018	\$1,000.00
2. Loss of rent for February 2018	\$1,000.00
3. Loss of rent for March 2018	\$1,000.00
4. Filing fee	\$100.00
<b>TOTAL MONETARY CLAIM</b>	<b>\$3,100.00</b>

The landlord provided undisputed testimony regarding the amounts owing described above. The landlord also requested that if she is entitled to do so under the *Act*, she would like to offset the tenant's security deposit from the amount of money owed by the tenant.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord and agent during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice on January 5, 2018. The effective vacancy date of the Notice is listed as January 15, 2018. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was January 15, 2018. I accept that the tenant continues to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

**Claim for unpaid rent and loss of rent** – Firstly, as the tenant was served and did not attend the hearing, I find the application of the landlord to be unopposed by the tenant. The landlord testified that \$3,000.00 in rent arrears and loss of rent is owed by the tenant as of the date of the hearing. Pursuant to section 26 of the *Act*, a tenant must

pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$3,000.00** comprised of unpaid rent and loss of rent.

The landlord is holding a security deposit of \$500.00 which was paid by the tenant at the start of the tenancy and has accrued no interest since the start of the tenancy. As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

**Monetary Order** – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus interest as follows:

Rent arrears owed by tenant as claimed	\$3,000.00
Filing fee	\$100.00
<b>Subtotal</b>	<b>\$3,100.00</b>
<i>(Less tenant's security deposit including \$0.00 interest)</i>	<i>-\$500.00)</i>
<b>TOTAL BALANCE OWING BY TENANT TO LANDLORD</b>	<b>\$2,600.00</b>

### Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find the tenancy ended on January 15, 2018 which was the effective date listed on the undisputed 10 Day Notice.

The landlord has established a total monetary claim of \$3,100.00 as indicated above. The landlord has been authorized to retain the tenant's full security deposit of \$500.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$2,600.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 13, 2018

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Residential Tenancy Branch