



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF, CNR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord claims that the tenant was served with the notice of hearing package and the submitted documentary evidence by sliding it under the door of the rental unit on January 21, 2018. The tenant disputes this claim stating that she was not served. The tenant stated that she first became aware of the landlord's application when she received an email from the Residential Tenancy Branch regarding the deadline on submitted evidence for the hearing approximately 1 week prior to the scheduled hearing date. The landlord has no supporting evidence that the tenant was served. Through extensive discussions with both parties, I find that the tenant has been sufficiently served with the landlord's notice of hearing package and the submitted documentary evidence. The tenant provided undisputed affirmed testimony that upon receiving the email she was able to discover the access codes to review the landlord's application for disputes and the submitted documentary evidence. The tenant was able to describe the contents of the landlord's monetary claim. The tenant provided no reason why she was

not able to proceed with the hearing regarding the monetary claim. As such, I find that the tenant is deemed sufficiently served as per section 90 of the Act.

### Preliminary Issue

At the outset it was clarified that although the tenant had filed an application for dispute requesting an order to cancel the notice to end tenancy, this application was dealt with on February 7, 2018 in a previously scheduled hearing. The tenant's application was dismissed and the landlord was granted an order of possession pursuant to section 55 of the Act. As such, the landlord's request for an order of possession is no longer required.

The tenant also referenced that this matter was already being dealt with at the Small Claims Division of the Provincial Court of British Columbia. The landlord disputed that he has not filed any duplicate claims. The tenant clarified that the Small Claims Filing was in regards to a monetary claim that she made. As such, I find that there is insufficient evidence that the landlord's monetary claim for unpaid rent has already been spoken to at the Residential Tenancy Branch and is currently before the Small Claims Division of the Provincial Court.

This hearing shall proceed on the landlord's issues of unpaid rent and recovery of the filing fee.

At the conclusion of the hearing both parties requested that the decision and any orders be provided to them via email. As such, emails for both parties were confirmed for delivery of the Decision and any orders.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 1, 2016 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated November 12, 2016. The monthly rent was \$420.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$200.00 was paid on November 9, 2016.

The landlord seeks a monetary order for unpaid rent of \$1,510.00 which consists of:

\$420.00	Unpaid Rent, June 2017
\$250.00	Unpaid Rent, July 2017
\$420.00	Unpaid Rent, September 2017
\$420.00	Unpaid Rent, October 2017

The tenant provided affirmed testimony that the above noted claims for unpaid rent were not paid to the landlord. The tenant also stated that she did not obtain an order authorizing her to not pay the rent nor did she have the permission from the landlord

The landlord claims that the tenant was served with a 10 Day Notice dated December 18, 2017 on December 18, 2017 in person. The 10 Day Notice sets out that the tenant failed to pay rent of \$1,510.00 that was due on October 1, 2017 and an effective end of tenancy date of December 28, 2017. The landlord provided a proof of service document which states that the tenant was served with the 10 Day Notice dated December 18, 2017, who signed in receipt of the 10 Day Notice on December 18, 2017.

### 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, I accept the undisputed affirmed evidence that the tenant failed to pay rent for the landlord's claims of rental arrears of:

\$420.00	Unpaid Rent, June 2017
\$250.00	Unpaid Rent, July 2017
\$420.00	Unpaid Rent, September 2017
\$420.00	Unpaid Rent, October 2017

I also accept the undisputed affirmed evidence of the landlord that the 10 Day Notice was served upon her in person on December 18, 2017. As such, I find that the landlord has established a claim for unpaid rent as claimed totalling, \$1,510.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted a monetary order for \$1,610.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division 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 16, 2018

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Residential Tenancy Branch