



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Code          OPR, MNRL, FFL

### Introduction

This decision pertains to the Landlord's application for dispute resolution made on March 12, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlord seeks the following relief:

1. an order of possession for unpaid rent;
2. a monetary order for money owed or compensation for damage or loss; and,
3. a monetary order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing before me and were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. The Landlord was assisted by an interpreter, and called one witness. I affirmed the landlord, the witness, and the tenant.

The Landlord's witness, a process server, testified that they served the Tenant with a Notice of Dispute Resolution Hearing package (the "Notice of Hearing") on March 15, 2018, late in the morning, by attaching a copy (using scotch tape) to the Tenant's door. The process server testified that in their experience, they usually receive a phone call from the recipient tenant. In this case, they had not, so the process server's assistant returned to the property and handed another copy of the Notice of Hearing to the Tenant, in person, at 6:15 PM on Sunday, April 22, 2018. The Tenant testified that they did not receive the first copy, but did receive the second copy.

I am satisfied on the basis of the testimony that the Tenant was served on March 15, 2018, pursuant to section 89 of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issue of this application will be considered in my decision.

### Issues

1. Is the Landlord entitled to an order of possession for unpaid rent?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to a monetary order granting recovery of the filing fee?

### Background and Evidence

The tenancy agreement was oral, and no documentary evidence regarding the terms of the agreement were submitted into evidence by either party. The Landlord testified that the tenancy commenced January 1, 2017. The Tenant objected, and testified that the tenancy commenced January 11, 2017. The monthly rent is \$2,000.00, due on the first of the month. The Tenant paid a security deposit of \$1,000.00. Regarding the absence of a written tenancy agreement, the Tenant testified that they asked the Landlord to sign a written tenancy agreement almost a year later, at some point after January 2018, but that the Landlord refused to do so. The Landlord did not respond to, or make any comment on, this claim. Section 13 of the Act states that “a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.”

The Landlord testified that the Tenant has not paid rent for March 2017, September 2017, November 2017, December 2017, January 2018, March 2018, and April 2018, for a total claim of \$14,000.00. The Landlord testified that the Tenant attempted to make partial payments for March 2017 and March 2018, but that the Tenant's cheques were returned NSF. No documentation regarding the cheques were submitted into evidence with the Residential Tenancy Branch prior to the hearing, nor was any ledger or other documentary evidence submitted showing which months the Tenant paid and did not pay the rent.

The Landlord's witness, the process server, testified that they served the Tenant by way of registered mail, with a 10 Day Notice for Unpaid Rent (the “Notice”) on February 5, 2018, with an end of tenancy date of February 19, 2018. The Landlord submitted into evidence Canada Post tracking information and documentation. Pursuant to section 90 of the Act, the Notice is deemed to have been received on the 5th day after it is mailed.

Therefore, the end of tenancy date would be February 20, 2018. The Tenant acknowledged receiving the Notice, and testified that they did not dispute the Notice within 5 days after receiving it.

The Tenant testified that they in fact did pay rent for March 2017, September 2017, November 2017, December 2017, and January 2018, but that they did not pay rent for March 2018 or April 2018. Further, they testified that they paid rent in cash for the months in 2017, but that they did not obtain a receipt for rent from the Landlord. The Landlord testified that they did provide receipts for the months that the Tenant did pay.

The Tenant testified that on or about January 2, 2018, they and the Landlord revised their oral tenancy agreement whereby monthly rent was reduced to \$1,000.00, due on the first of the month, commencing January 2018. The Landlord disputed that any such revision of the agreement occurred.

Regarding the non-payment of rent, the Tenant testified that they did not pay rent for the months of March 2018 and April 2018 because the Landlord owed them approximately \$2,300.00 that the Tenant spent on repairing a swimming pool. The swimming pool was "green and disgusting," and required substantial maintenance due to pine needles from nearby trees becoming clogged in the pump. The Tenant did not submit any documentary evidence such as receipts for the repairs, or any photographic evidence regarding the condition of the swimming pool, before or after. Nor did the Tenant provide an explanation as to why an outdoor swimming pool needed to be repaired during the middle of winter. The Landlord did not testify regarding the swimming pool.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Pursuant to section 46 of the Act, the Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains that the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

Section 33 (7) of the Act permits a tenant to deduct the amount of emergency repair costs from rent when a landlord does not reimburse the tenant. "Emergency repairs" (defined in section 33 (1) of the Act) means repairs that are urgent, necessary for the health or safety of anyone or for preserving the property, and are for repairing leaks in pipes, sewer pipes, heating systems, locks, or electrical systems. I find that this definition does not cover repairs to swimming pools.

Taking into consideration all the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving their claim regarding unpaid rent for March 2018 and April 2018.

Section 55 (1) (b) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Applying section 55 of the Act to the unchallenged testimony regarding the Tenant's failure to pay rent for March 2018 and April 2018, and regarding the Tenant's failure to apply for dispute resolution, pursuant to sections 46 and 55 of the Act, I hereby grant an order of possession to the Landlord.

There is insufficient evidence before me to find that the Landlord has met the onus of proving their claim regarding unpaid rent for March 2017, September 2017, November 2017, December 2017, or January 2018. The Landlord claims that rent was not paid. The Tenant claims that rent was paid. Neither party provided any documentary evidence in support of their arguments, and as such I dismiss the Landlord's claim for a monetary award for those months.

Similarly, there is insufficient evidence before me to determine that the amount of rent owed for March 2018 and April 2018 is \$4,000.00. The Landlord submits that the monthly amount is \$2,000.00, whereas the Tenant submits that the monthly amount is \$1,000.00. The Landlord failed to provide any documentary evidence in support of their claim that the rent was \$2,000.00 per month, and in the absence of any supporting evidence from either party, I find that the Landlord has failed to prove on a balance of probabilities that the rent is \$2,000.00. Given the insufficient evidence, I am left with doubts regarding the amounts actually owed, and thereby dismiss the Landlord's application for a monetary order, with leave to reapply.

I dismiss the Landlord's claim for recovery of the filing fee, without leave to reapply.

Conclusion

**I hereby grant an order of possession for unpaid rent. This order must be served on the Tenant and may be filed in, and enforced as an order of, the Supreme 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: April 26, 2018

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Residential Tenancy Branch