



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WITMAR HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** FFL OPRM-DR

### **Introduction**

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

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

While the landlord's agent GW ("landlord") attended the hearing by way of conference call, the tenant did not. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent testified that the tenant was served by way of Registered Mail with the landlord's application for dispute resolution hearing package on March 19, 2018. The landlord provided the tracking information during the hearing. In accordance with sections 88, 89, and 90 the *Act*, I find that the tenant was deemed served with the landlord's application and evidence on March 24, 2018, five days after its registered mailing. The tenant did not submit any written evidence for this hearing.

The landlord's agent testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 5, 2018 ("10 Day Notice") on February 5, 2018 by way of posting the notice on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on February 8, 2018, three days after its posting.

Although the landlord applied for a Monetary Order of \$620.00 in their initial claim, since they applied another \$45.00 in outstanding rent and late fees have become owing that was not included in their application. I have accepted the landlord's request to amend their original application from \$620.00 to \$665.00 to reflect this additional unpaid rent and late fees that have become owing by the time this hearing was convened.

**Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent?

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

**Background and Evidence**

The landlord testified regarding the following facts. This month-to-month tenancy began on December 1, 2014. In November 2015 the tenant moved to a different suite in an adjacent building owned by the same landlord. The landlord submitted a copy of the tenancy agreement with the amended address. The monthly rent was set at \$620.00 payable on the first of every month. The tenant was served with a Notice of Rent Increase effective May 1, 2018, and the monthly rent was increased to \$640.00 as of May 1, 2018. The landlord holds a security deposit in the amount of \$400.00 and a key deposit of \$10.00 for this tenancy. The tenant still resides there.

The landlord issued the 10 Day Notice on February 5, 2018, indicating an effective move-out date of February 18, 2018. The landlord testified that the tenant owes \$665.00 in outstanding rent and late fees at the time of the hearing. \$635.00 was outstanding at the time the 10 Day Notice was issued to the tenant. Since the 10 Day Notice was issued the tenant made a \$450.00 payment on February 14, 2018, a \$870.00 payment on March 2, 2018, a \$450.00 payment on March 7, 2018, and a \$155.00 payment on April 5, 2018. The tenant has not made rent payment for the month of May 2018. The total outstanding rent at the time of the hearing is \$590.00. The landlord is also seeking a monetary order for the late fees, which is \$25.00 for 3 months of late payments for a total of \$75.00.

## **Analysis**

The landlord's agent provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on February 18, 2018, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by February 18, 2018. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenant has not moved out, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act* so the landlord may take full possession of the premises.

**Section 26** of the Act, in part, states as follows:

### **Rules about payment and non-payment of rent**

**26 (1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord provided undisputed evidence that the tenant failed to pay the outstanding rent and late fees in the amount of \$665.00. Therefore, I find that the landlord is entitled to \$665.00 in outstanding rent for this tenancy.

The landlord continues to hold the tenant's security deposit of \$400.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

## **Conclusion**

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone 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.

I issue a \$365.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent and late fees, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Item	Amount
Unpaid Rent and late fees	\$665.00
Recovery of Filing Fee for this Application	100.00
Security Deposit	-400.00
<b>Total Monetary Order</b>	<b>\$365.00</b>

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: May 2, 2018

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Residential Tenancy Branch