



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## DECISION

### Dispute Codes

For the landlord: OPRMN-DR FFL

For the tenant: CNR

### Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (“applications”) under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 3, 2018 (“10 Day Notice”).

An agent for the landlord (“agent”) and a co-owner of the landlord company (“co-owner”) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all 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.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (“Notice of Hearing”), the application and documentary evidence were considered. The agent and co-owner provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenant by the co-owner in person at the rental unit address at 2:00 p.m. on April 13, 2018. The agent confirmed that she witnessed the co-owner serve the tenant as claimed by the co-owner. Based on the above, I am satisfied that the tenant was sufficiently served. After the ten minute waiting period, the tenant’s application was **dismissed without leave to reapply** as the tenant failed to attend the hearing to present the merits of their application. Furthermore, the agent and co-owner stated that the tenant did not serve

them with any paperwork. Based on the above, I consider the tenant not to have disputed the 10 Day Notice as the tenant failed to attend this hearing and I consider the landlord's application to be unopposed by the tenant as a result.

#### Preliminary and Procedural Matter

The agent confirmed the landlord's email address at the outset of the hearing. The agent and co-owner confirmed their understanding that the decision would be emailed to the landlord and that any applicable orders would be emailed to the landlord. The tenant will receive the decision by regular mail as the tenant did not provide an email address in their application.

#### 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?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

#### Background and Evidence

A copy of the fixed term tenancy agreement was not submitted in evidence. The agent affirmed that the fixed term tenancy began on August 1, 2017 and is scheduled to revert to a month to month tenancy after August 1, 2018. The agent testified that monthly rent is \$1,600.00 per month which is due on the first day of each month. The co-owner testified that the tenant only paid a security deposit of \$800.00 which the landlord continues to hold. The co-owner testified that the tenant failed to pay the \$800.00 pet damage deposit.

The agent and co-owner stated that as of the date of the hearing, May 24, 2018 the tenant continues to owe \$200.00 in rent arrears/loss of rent. The agent and co-owner affirmed that the tenant failed to pay the \$1,600.00 amount owing as indicated on the 10 Day Notice within 5 days of being served on April 3, 2018 with the 10 Day Notice dated April 3, 2018. The effective vacancy date listed on the 10 Day Notice is listed as April 3, 2018 which automatically corrects under section 53 of the *Act* to April 13, 2018. As mentioned above, I find the tenant did not dispute the 10 Day Notice by failing to attend this hearing and according to the agent and co-owner, failed to serve them with the tenant's application.

#### Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

**10 Day Notice** – Firstly, I accept the undisputed testimony of the agent and the co-owner that the tenant failed to dispute the 10 Day Notice or pay the \$1,600.00 amount within 5 days of being served with the 10 Day Notice. I also accepted that while partial payments were made since that effective date of the 10 Day Notice, the tenant continues to owe \$200.00 for loss of May 2018 rent.

Based on the above, I find the tenant is conclusively presumed under the *Act* to have accepted the effective vacancy date of April 13, 2018. I find the 10 Day Notice is valid and is upheld. Section 55 of the *Act* applies and states:

**Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

As a result and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant as the tenant continues to occupy the rental unit.

**Unpaid rent/ Loss of rent** – Based on the above, I find the tenant has breached section 26 of the *Act* which states:

**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.

[My emphasis added]

I accept the undisputed testimony before me that the tenant owes a total of **\$200.00** in loss of rent. As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

I find the tenancy ended on April 13, 2018.

**Monetary Order** – I find the landlord has established a total monetary claim of **\$300.00** comprised of \$200.00 in rent arrears plus the recovery of the cost of the \$100.00 filing fee. Pursuant to section 72 of the *Act*, I authorize the landlord to retain **\$300.00** from the tenant's security deposit of \$800.00 which has accrued no interest in full satisfaction of the landlord's monetary claim. I find the tenant's security deposit is now \$500.00 effective immediately.

### Conclusion

The tenant's application is dismissed, without leave to reapply, as indicated above.

The landlord's application is successful. I find the tenancy ended on April 13, 2018. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The landlord must serve the tenant with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$300.00 as described above. The landlord has been authorized to retain \$300.00 from the tenant's security deposit in full satisfaction of the landlord's monetary claim. The tenant's security deposit is now \$500.00 as a result.

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: May 24, 2018

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Residential Tenancy Branch