



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, MNRL, FFL

### Introduction

This teleconference hearing was scheduled in response to an application from the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent and the recovery of the filing fee paid for this application. The Landlord’s Application was initiated under the Direct Request process, but was unable to proceed due to the lack of a written tenancy agreement and was scheduled for a teleconference hearing instead.

The Tenant called into the hearing as did a family member of the Landlord, acting as an agent for the Landlord. Both parties submitted evidence in advance of the hearing and were affirmed to be truthful in their testimony.

I have reviewed all oral and written 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.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a Monetary Order for unpaid rent?

### Background and Evidence

Both parties were in agreement as to the details of this tenancy. The tenancy began on April 1, 2017 through an oral Tenancy Agreement. Monthly rent in the amount of

\$800.00 is due on the first day of the month. A security deposit in the amount of \$400.00 was paid to the Landlord at the beginning of the tenancy.

The Landlord testified that the Tenant has not paid rent for the months of January, February, March and April 2018. A 10 Day Notice to End Tenancy (the "10 Day Notice") was issued and delivered to the Tenant in person on February 6, 2018.

The Tenant confirmed during the hearing that he did not pay rent for the last four months. He also confirmed that he did not pay the rent owing within five days of receiving the 10 Day Notice, nor did he apply to dispute the 10 Day Notice within five days as per the requirements of Section 46(4) of the *Act*.

A previous hearing regarding this tenancy took place on February 6, 2018 based on an application by the Tenant. The file number of this previous application is noted on the front page of this decision. I reviewed this decision as the Tenant claimed during the hearing that the Landlord was not upholding orders from that decision. The previous decision dated February 13, 2018 dismissed the Tenant's claims, other than an order for the Landlord to provide receipts for rent paid in cash pursuant to Section 26(2) of the *Act*. As the Tenant has not paid rent since the previous decision, no receipts have been issued.

### Analysis

I refer to Section 26(1) of the *Act*:

**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.

During the hearing, the Tenant testified as to a number of reasons why he believes he has the right to withhold rent, including the presence of bedbugs in the rental unit, the lack of a written tenancy agreement, being unsure as to who to pay the rent to and due to not receiving receipts for rental payments. I considered the evidentiary material before me as well as the testimony of both applicants and have determined that the Tenant had no right to withhold rent in accordance with the *Residential Tenancy Act*.

As per Section 46(4) of the *Act*, a tenant must pay the owing rent or apply to dispute a 10 Day Notice within five days. In accordance with Section 46(5) of the *Act*, if a tenant does not pay or dispute the 10 Day Notice within five days, they are presumed to have

accepted the notice and must vacate the rental unit. As the Tenant did not apply for Dispute Resolution and did not pay the rent owing within five days of receipt of the 10 Day Notice, I find that he is presumed to have accepted the end of the tenancy as per the effective date of the 10 Day Notice; February 16, 2018. As such, I find that the 10 Day Notice dated February 6, 2018 remains in effect and an Order of Possession will be issued to the Landlord.

In accordance with Section 67 of the *Act*, the Landlord is entitled to the rent owed to them as of April 30, 2018 at \$800.00 per month, for a total of \$3,200.00. As the Landlord's application was successful, they are also entitled to the recovery of the \$100.00 filing fee paid for this application as per Section 72 of the *Act*, for a total Monetary Order of \$3,300.00.

### Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to Sections 67 and 72 of the *Act*, I grant the landlord a **Monetary Order** in the amount of \$3,300.00 for rent owed for January, February, March and April 2018 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and 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 4, 2018

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Residential Tenancy Branch