



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR/FFL

### Introduction

On April 13, 2018, the Landlord submitted an Application for Dispute Resolution by Direct Request under the *Residential Tenancy Act* ("the Act"). The Landlord was requesting an Order of Possession due to unpaid rent and utilities, a Monetary Order to recover the unpaid rent and utilities, and to be compensated for the cost of the Filing Fee. The Landlord's evidence was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing via conference call.

Agent KR, representing the Landlord, attended the conference call hearing as the Landlord was out of the country; however, the Tenant did not attend at any time during the 60-minute hearing. Agent KR testified that the Notice of Hearing was provided to the Tenant in person on April 28, 2018; however, could not provide specific details. The Landlord had submitted evidence that the Notice of Hearing was sent to the Tenant by registered mail on April 27, 2018. The tracking number for the registered mail indicated that a notice card was left at the Tenant's door on May 2, 2018 and that the Notice of Hearing package was picked up from Canada Post by the Tenant on May 8, 2018. I find that the Tenant is deemed to have received the Notice of Hearing on May 2, 2018, in accordance with Sections 89 and 90 of the Act.

Agent KR, was provided the opportunity to present his testimony, written and documentary evidence and to make submissions at the hearing. 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.

### Issues to be Decided

Should the Landlord be issued an Order of Possession in relation to the Ten-Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 1, 2018, (the "Notice")?  
Should the Landlord receive a Monetary Order for unpaid rent and utilities?

Should the Landlord be compensated for the Filing Fees in relation to this Application?

### Background and Evidence

Agent KR provided the following undisputed testimony:

The tenancy between the Landlord and Tenant began on September 15, 2017 and the rent was \$3,800.00 per month, payable on or before the first of every month. A security deposit of \$1,900.00 is currently being held by the Landlord. Although there was an addendum to the Tenancy Agreement that referred to the potential of the Tenant eventually purchasing the rental property, it was established that the conditions of a Contract of Purchase and Sale were never completed and that the month-to-month tenancy continued.

The Notice was delivered to the Tenant at the rental unit, via their mailbox, on April 1, 2018 and a Proof of Service document was submitted as evidence. The Notice indicated that the Tenant had failed to pay rent in the amount of \$7,600.00 and utilities in the amount of \$1,049.65 and that they could either pay the outstanding rent and utilities or file an Application for Dispute Resolution with the Residential Tenancy Branch within five days. If the Tenant failed to pay or dispute, they would be required to move out of the rental unit by April 22, 2018.

The Tenant and several other unknown occupants are currently living in the rental unit and have not paid full rent or utilities for the last three months.

The Landlord submitted evidence that documented the outstanding rent for March, April, and May 2018 and the outstanding utilities. Agent KR updated the claim by acknowledging that the Landlord has collected further, partial rent from some of the other occupants of the rental unit. The table below summarizes the monetary claim as follows:

Item	Amount
Unpaid rent for March 2018	\$3,800.00
Balance of unpaid rent for April 2018	2,400.00
Balance of unpaid rent for May 2018	2,750.00
Unpaid utilities (Hydro and Fortis)	1,049.65
Partial rent collected since Application	-1,050.00
<b>Total Monetary Claim</b>	<b>\$8,949.65</b>

### Analysis

Section 88 of the Act indicates that a Notice to End Tenancy may be served by leaving a copy in a mailbox or mail slot for the address at which the Tenant resides. Section 90 of the Act explains that if a document is left in the mailbox, the document is deemed served on the third day after it is left. I accept the testimony of Agent KR that the Notice was left in the Tenant's mailbox on April 1, 2018 and as a result, I find that the Tenant was deemed served with the Notice on April 4, 2018.

Section 46 of the Act authorizes a Landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenant receives the notice. The Tenant, within 5 days after receiving the notice, may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution. If the Tenant does not pay the rent or make an Application for Dispute Resolution, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As I have found that the Notice was deemed served on the Tenant on April 4, 2018 and that there is no evidence before me that the Tenant paid all of the rent due or applied for Dispute Resolution within 5 days or applied for more time to cancel the Notice, I find that the Tenant is conclusively presumed to have accepted the end of her tenancy on April 22, 2018, as stated on the Notice.

As the Tenant was required to vacate the rental unit on April 22, 2018, and this has not occurred, I find that the Landlord is entitled to a two-day Order of Possession.

The Landlord was successful with their Application and as such, is entitled to be reimbursed for the Filing Fee of \$100.00.

The Landlord has established a monetary claim, in the amount of \$9,049.65, which includes \$8,949.65 in unpaid rent and utilities and the \$100.00 in compensation for the Filing Fee for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit of \$1,900.00, in partial satisfaction of the monetary claim.

Based on these determinations, I grant the Landlord a Monetary Order for the balance of \$7,149.65.

Item	Amount
Unpaid rent and utilities	\$8,949.65
Filing Fee	+100.00
Total monetary claim	\$9,049.65
Minus Security Deposit	-1,900.00
<b>Total Monetary Order</b>	<b>\$7,149.65</b>

### Conclusion

I am granting the Landlord an Order of Possession to be effective two days after notice is served 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.

I am granting the Landlord a Monetary Order for \$7,149.65. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 22, 2018

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Residential Tenancy Branch