



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT Limited Partnership  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

On April 23, 2018, an adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) considered the landlord's application for dispute resolution using the Residential Tenancy Branch's direct request process. As the adjudicator did not believe there was sufficient information provided whereby an *ex parte* hearing of this matter, could proceed she directed that the landlord's application proceed by way of a participatory hearing.

I have been delegated authority to consider the landlord's application for the following in this participatory hearing:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:55 P.M. in order to enable her to call into this teleconference hearing scheduled for 1:30 P.M. The landlord's agent MO ("the landlord"), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that she sent the tenant a copy of the landlord's direct request proceedings, which included the landlord's application for dispute resolution and written evidence, plus the notice of hearing returnable today via registered mail on May 2, 2018. The Canada Post tracking number and receipt were provided as part of the

written evidence at the hearing. In accordance with sections 88 and 89 of the *Act*, I find that the tenants have been served with the above documents as of May 7, 2018

Issue(s) to be Decided

Is the landlord entitled to:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Background and Evidence

This tenancy began as a month to month tenancy on September 1, 1998. Initial rent was set at \$550.00 per month, payable in advance on the first of each month. Since then the rent has increased annually. The rent for the period starting May 1, 2017, was increased to \$877.12 per month as is evidenced by a Notice of Rent Increase – Residential Rental Units, dated 10/Jan/2017, filed. The rent for the period starting May 1, 2018, was increased to \$912.20 per month as is evidenced by a Notice of Rent Increase – Residential Rental Units, dated 10/Jan/2018, filed. The landlord continues to hold the \$275.00 security deposit for this tenancy, paid on August 21, 1998.

The landlord gave sworn testimony, supported by a written Proof of Service document and sworn testimony from the landlord's witness, that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door at or about 11:51 a.m. on April 5, 2018.

The landlord's 10 Day Notice identified \$1,745.24 in unpaid rent and charges owing as of April 5, 2018. This included unpaid rent for the months of March and April of 2018, plus NSF and Late Payment fees in the amount of \$25.00 per month for each. The landlord testified that the tenant has not paid anything towards the May 2018 rent and seeks payment for this month plus NSF and Late Payment Fees.

The landlord was unable to produce any document this shows the tenant ever agreed to pay NSF Fees or Late Payment Fees of \$25.00 per month each. The landlord did point out that pursuant section 8 of the tenancy agreement the tenant had agreed to pay "...a minimum service charge of \$20.00 each...", for all "Late payment, returned and non-sufficient fund cheques...". Based on this information the landlord agreed to amend its claim to seek \$20.00 per month in total when there were any late payment or NSF issues.

As a result, the landlord is seeking:

Item	Amount
Unpaid Rent for March	\$877.12
Unpaid Rent for April	877.12
Unpaid Rent for May	912.20
Late/NSF Fees @ 20.00 x 3	60.00
For March, April, May of 2018	
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$2,826.44</b>

### Analysis

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on April 8, 2018.

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice.

In this case, the notice required the tenant to vacate the premises by April 18, 2018. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce the Order in the Supreme Court of British Columbia.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that “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.”

In this case, there is undisputed evidence that the tenant has not paid anything towards her rent for March and April, and has overheld her tenancy without paying any rent for May 2018. Under these circumstances, I allow the landlord’s application for a monetary award of \$2,666.44, for unpaid rent owing for these three months, plus fees Late/NSF fees of \$20.00 per month for 3 months.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the tenant.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 monetary Order under the following terms, which allows the landlord to recover unpaid rent owing, plus NSF/Late fees and, the filing fee for this application:

Item	Amount
Unpaid Rent for March	\$877.12
Unpaid Rent for April	877.12
Unpaid Rent for May	912.20
Late/NSF Fees @ 20.00 x 3	60.00

For March, April, May of 2018	
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$2,826.44</b>

The landlord is provided with the 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 the monetary Order, the 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: June 6, 2018

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Residential Tenancy Branch