



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KHANIQAHI NIMATULLAHI CANADA  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM, MNDL-S, MNRL-S, FFL

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting an Order for Possession on the basis of a 10-Day Notice to End Tenancy for Unpaid Rent and Utilities, a Monetary Order for arrears in rent and utility payments and other damages, an order to retain the security deposit in partial satisfaction of the Monetary Order and an order for payment of the filing fee.

The Landlord appeared for the scheduled hearing. I find that the Notice of Hearing was properly served by registered mail and in person by the Landlord on May 4, 2018 and that evidence was also submitted and served by the Landlord. The tracking number for Canada Post confirms that the Tenant signed for the package on May 9, 2018.

The Tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:48 p.m. in order to enable the Tenant to call into this teleconference hearing scheduled for 1:30 p.m.

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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply. The decision was made to proceed with the hearing and to hear the Landlord’s Application.

### Issues to be Decided

Is the Landlord entitled to an Order for Possession, pursuant to section 55 of the *Residential Tenancy Act* ("Act")?

Is the Landlord entitled to a Monetary Order for the rent arrears and utility bills and other damages, pursuant to section 67 of the Act?

Is the Landlord entitled to payment of the filing fee, pursuant to section 72 of the Act?

Is the Landlord entitled to retain the security deposit in partial satisfaction of any Monetary Order?

### Background and Evidence

This tenancy began in 2015 as a one-year fixed term, which reverted to a month-to-month tenancy for \$750.00 per month due on the first of each month, plus 25% of the utility costs (hydro and natural gas), as evidenced by the written Tenancy Agreement and Addendum signed by the Tenant on May 14, 2015, and submitted into evidence. A security deposit of \$375.00 was collected. The Landlord stated that he was a good tenant until he received an email late December 2017 wherein the Tenant stated he had lost his job and might not be able to make rent payments.

When the rent and utility payments fell into arrears in 2018, the Landlord states that he served a 10-Day Notice to End Tenancy dated February 23, 2018; the Tenant disputed that Notice (file number noted on the cover sheet of this decision) and a hearing was held May 2, 2018, which the Landlord did not attend. The Landlord admits that the Notice of February 23rd was incorrect. A decision was rendered on May 3, 2018 which reads, in part:

*"The tenant attended the hearing via conference call and provided affirmed testimony. The landlord did not attend. The tenant provided undisputed affirmed testimony that the landlord was served with the notice of hearing package and the submitted documentary evidence by posting it to the landlord's door on February 22, 2018. Pursuant to section 89 of the Act, the tenant's application is dismissed with leave to reapply as the posting of an application for dispute is not*

*an accepted form of service without an order under the Act. Leave to reapply is not an extension of any applicable limitation period.”*

That Notice was effectively cancelled by the Landlord, who issued a new 10-Day Notice to End Tenancy for Unpaid Rent and Utilities on March 1, 2018. It was served by posting on the Tenant's door on March 1, 2018 and this was witnessed by a third party who signed a Proof of Service form. The effective date stated was March 10<sup>th</sup>.

The Tenant did not formally dispute this second Notice, nor did he make any payments towards the rent arrears or utilities. The Landlord has not heard from the Tenant since the new Notice was served. The Landlord received the May 3<sup>rd</sup> decision from the previous hearing, and decided to bring this Application to obtain an Order for Possession.

The Landlord states that rent has not been paid since December of 2017, resulting in rent arrears of \$3,760.00. The Landlord submitted further evidence of all the utility bills, and calculates the Tenant's outstanding share to be \$364.00; a written demand letter was sent to the Tenant initially on February 5, 2018 and the amounts continued to increase after that date. In addition to the utility bills, the Landlord provided copies of three rent cheques that were not negotiated due to “insufficient funds”, which he states resulted in three bank fee charges of \$7.00 each. Another demand letter was sent on February 15, 2018 demanding payment of the utilities and bank charges to date.

In addition to the amounts claimed, the Landlord asks for vacant possession of the rental premises. The Landlord is concerned that it will be difficult to collect under any Monetary Order and asks that the Tenant be required to provide any work address and forwarding address. He states that he may have to make a further claim for damages, depending on the condition of the rental premises after the tenancy is ended.

### Analysis

A landlord may serve notice to end tenancy under section 46 of the Act, if a tenant falls behind in rent:

**46** (1) *A landlord may 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.*

*(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

*(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

*(4) Within 5 days after receiving a notice under this section, the tenant may*

*(a) pay the overdue rent, in which case the notice has no effect, or*

*(b) dispute the notice by making an application for dispute resolution.*

*(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit to which the notice relates by that date.*

*(6) If*

*(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and*

*(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,*

*the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.*

I find that the Landlord has provided a Notice to End Tenancy dated March 1, 2018 that complies in form and content with section 52 of the Act. The Notice was served properly and deemed received on March 4, 2018. The effective date is automatically corrected to March 14, 2018 to allow time for proper service under the Act. The Tenant had five days to dispute this Notice or pay the amounts outstanding; he did not do so. At the time of issuing the notice, I find that there were rent arrears outstanding from previous months. Pursuant to the Act, the Tenant is deemed to have accepted the Notice to End Tenancy. I find that the Landlord is entitled to an Order of Possession for

unpaid rent owing for the months of January through May, 2018, as well as unpaid utilities.

The Landlord has filed a monetary claim for payment of the arrears in rent, utilities and the bank fees. The Tenant was served with a Notice of the Hearing but chose not to appear for the hearing. The Landlord has proven the amounts claimed and an order will be issued for payment by the Tenant. As the Landlord was successful in this Application, I am also prepared to award the filing fee of \$100.00.

The Landlord collected a security deposit of \$375.00. I find that the Landlord is entitled to retain that security deposit in partial satisfaction of the Monetary Order. The final award is calculated as follows:

Item	Amount Claimed	Total
Rent Arrears (January – May) (\$750.00 X 5 months)	\$3,750.00	
Unpaid utilities	364.00	
Bank fees	21.00	
Filing Fee	100.00	
Subtotal	\$ 4,235.00	
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LESS: Security Deposit	\$375.00	
	BALANCE:	\$3,860.00

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

### 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.

The Landlord shall retain the security deposit in the sum of \$375.00 and I further grant an Order for payment of \$3,860.00 to the Landlord by the Tenant forthwith.

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 7, 2018

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Residential Tenancy Branch