



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SRLAN HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:46 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 sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord provided witnessed written evidence supported by sworn testimony that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was placed in the tenant's mail slot on May 3, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with this Notice.

The landlord provided written evidence supported by sworn testimony that a copy of the landlord's dispute resolution hearing package and a written evidence package were sent to the tenant by registered mail on May 25, 2018. The landlord provided copies of the

Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. I find that the tenant was deemed served with this package in accordance with sections 88, 89 and 90 of the *Act* on May 30, 2018, the fifth day after this registered mailing.

At the commencement of this hearing, the landlord requested authorization to increase the amount of the monetary award claimed to reflect an additional \$905.00 in rent that became owing as of June 1, 2018. As the tenant clearly realized that this additional rent became due as of the date of this hearing, I allowed the landlord's request to increase the amount of the requested monetary award for unpaid rent from \$905.00 to \$1,810.00.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord testified that the tenant commenced residing in this rental unit in or about December 2012, on the basis of a written tenancy agreement between one of his family members and the landlord. When the family member left the premises by August 1, 2016, the tenant remained living in this rental unit. Current monthly rent is set at \$905.00, payable in advance on the first of each month. The landlord continues to hold the \$410.00 security deposit for this tenancy paid in November 2012.

The landlord issued the 10 Day Notice for the non-payment of \$905.00 in rent that became owing by May 3, 2018, when the 10 Day Notice was issued. The landlord provided undisputed sworn testimony that no further payments have been made by the tenant since the 10 Day Notice was issued.

### Analysis

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 their tenancy on the corrected effective date of the notice. In

this case, this required the tenant to vacate the premises by May 16, 2018, the corrected effective date of the 10 Day Notice. 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 this 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 their rent for May 2018, and has overheld their tenancy without paying any rent for June 2018. Under these circumstances, I allow the landlord's application for a monetary award of \$1,810.00, for unpaid rent owing for these two months.

I also allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

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. 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 issue a monetary Order under the following terms, which allows the landlord to recover unpaid rent owing and the filing fee for this application and to retain the tenant's security deposit:

Item	Amount
Unpaid May 2018 Rent	\$905.00
Unpaid June 2018 Rent	905.00
Less Security Deposit	-410.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1,500.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 19, 2018

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Residential Tenancy Branch