



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HAVEN MANAGEMENT CO. LTD. DBA HAVEN PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, OPR, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for a Monetary Order for unpaid rent, an Order of Possession based on a 10 Day Notice for Unpaid Rent and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant during the approximately 10 minute hearing. As the Tenant was not present, service of the Notice of Dispute Resolution Proceeding (the “Notice of Hearing”) was addressed.

The Landlord provided affirmed testimony that the Notice of Hearing along with the Landlord's evidence package was sent to the Tenant by registered mail on May 16, 2018. The registered mail tracking number was submitted in evidence and is included on the front page of this decision. Entering the tracking number on the Canada Post website shows the package as claimed by the Tenant on May 22, 2018. I find that the Tenant was duly served with notice of this hearing in accordance with the *Act*.

### Issues to be Decided

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

Is the Landlord entitled to an Order of Possession for unpaid rent?

### Background and Evidence

The Landlord provided affirmed and undisputed testimony regarding the tenancy. The tenancy began on January 1, 2018. Monthly rent is \$1,550.00 and a security deposit of \$775.00 was paid at the outset of the tenancy. The Landlord is still in possession of the full security deposit amount.

The Landlord testified that the Tenant paid rent on January 1, 2018 and the cheque was returned as non-sufficient funds (NSF). Rent paid on February 1, 2018 was also returned as NSF.

The tenancy agreement was submitted into evidence and states that a \$25.00 late fee will be charged to a tenant for a late rent payment or if the payment is returned as NSF. Charges of \$25.00 were charged to the Tenant for the months of January and February 2018.

In March 2018, the Tenant made payments of \$1,550.00 and \$1,600.00. On April 1, 2018, the rent payment was again returned as NSF and a \$25.00 NSF fee charged. A partial payment of \$550.00 was made on April 3, 2018.

Rental cheques for May 2018 and June 2018 were also returned as NSF and \$25.00 NSF fees charged for these months.

The Landlord issued a 10 Day Notice for Unpaid Rent (the "10 Day Notice") on April 20, 2018 which was served to the Tenant by registered mail. The 10 Day Notice stated the end of tenancy date as May 8, 2018.

The Landlord testified that the Tenant made a partial payment of \$1,000.00 on June 14, 2018, but there is a total amount of \$4,725.00 outstanding including rent and NSF fees. The Tenant is still residing in the rental unit.

### Analysis

Based on the undisputed testimony and evidence of the Landlord, I find that the 10 Day Notice was served to the Tenant in accordance with Section 46(1) of the *Act*, which states that a tenancy may ended if an amount of rent remains unpaid any day after it is due. Despite some partial payments towards the rent owing, there is still an amount of rent that is outstanding and owed to the Landlord.

I also find that no evidence that the Tenant disputed the 10 Day Notice or paid the remainder of the rent owing within the 5 days provided under Section 36(4) of the *Act*. In accordance with Section 46(5) of the *Act*, if a Tenant does not dispute the notice or pay the rent owing within 5 days, they are conclusively presumed to have accepted that the tenancy has ended.

After review of the 10 Day Notice that was submitted in evidence, I find that it complies with Section 52 of the *Act*, as required by Section 46(2). As such, I find that the Landlord is entitled to a two (2) day Order of Possession to be served to the Tenant.

Pursuant to Section 7 of the *Residential Tenancy Regulation*, a landlord may charge a \$25.00 late payment fee if the tenancy agreement includes a statement about the fee. As the tenancy agreement submitted in evidence includes information about the \$25.00 fee that will be charged for late payment or NSF payments, I allow the Landlord to claim NSF fees for the months of January, February, April, May and June 2018 for total late fee charges of \$125.00.

As the Landlord was successful in their application, I also award them the recovery of the filing fee paid for this application in the amount of \$100.00, pursuant to Section 72 of the *Act*.

In accordance with Section 72(2)(b), I order the Landlord to retain the security deposit in the amount of \$775.00 as partial satisfaction of the total amount owed.

Based on the evidentiary material and the testimony of the Landlord, I issue the Landlord a Monetary Order based on the following calculations:

*Monetary Order Calculations*

January 2018 rent	\$1,550.00
January 2018 NSF fee	\$25.00
February 2018 rent	\$1,550.00
February 2018 NSF fee	\$25.00
March 2018 rent	\$1,550.00
<i>Less March 2018 rent payment</i>	<i>(\$1,550.00)</i>
<i>Less March 2018 partial payment</i>	<i>(\$1,600.00)</i>
April 2018 rent	\$1,550.00
April 2018 NSF fee	\$25.00
<i>Less April 2018 partial payment</i>	<i>(\$550.00)</i>
May 2018 rent	\$1,550.00
May 2018 NSF fee	\$25.00
June 2018 rent	\$1,550.00
June 2018 late fee	\$25.00
<i>Less June 2018 partial payment</i>	<i>(\$1,000.00)</i>
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$775.00)</i>
<b>Total owing to Landlord</b>	<b>\$4,050.00</b>

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 **\$4,050.00** for rent owed for January, February, April, May and June 2018, NSF fees for those months 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: June 29, 2018

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Residential Tenancy Branch