



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPM, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on May 3, 2018. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance. .

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is there unpaid rent and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Has the Landlord had a loss or damage and if so how much?
5. Is the Landlord entitled to compensation for the loss or damage?

### Background and Evidence

This tenancy started on September 1, 2017 as a 3 month fixed term tenancy and then continued on a month to month basis after December 1, 2017. Rent is \$650.00 per month payable on the first day of each month. The Tenant paid a security deposit of \$325.00 on September 1, 2017. The Tenant said no condition inspection report was completed at the start of the tenancy.

The Landlord said that the Tenant gave him written notice on March 4, 2018 that the Tenant was moving out of the unit on April 30, 2018. The Landlord said he accepted the written notice and made plans for the rental unit after the was to Tenant move out. The Landlord continued to say the Tenant did not move out and she did not pay the rent for May and June, 2018 in the amount of \$650.00 for each month. The Landlord added that the Tenant's sister and 4 children also moved in so he thinks the rent should have been increased to \$850.00 per month.

The Landlord further indicated that the Tenant is living at the rental unit and he is requesting an Order of Possession for as soon as possible.

Further the Landlord said the Tenant did not pay a pet deposit and he is requesting that the Tenant pay him \$425.00 as a pet deposit.

In addition the Landlord said the Tenant broke a window and damaged a door frame in the unit. The Landlord said he is claiming \$464.53 for the window replacement and an estimated \$300.00 to repair the door frame. The Landlord included a paid receipt for the replacement window in the evidence package.

The Landlord also sought to recover a false alarm fee of \$100.00 from the municipality and the filing fee of \$100.00 for this application. .

The Tenant said she did break the window to get access to the rental unit as she did not have the combination for the lock on the door with her. Further the Tenant said the door frame was damaged at the start of the tenancy and the damage that happened during the tenancy was a result of the original damage that was before her tenancy. The Tenant said she is not responsible for the door frame damage.

The Tenant continued to say that she has not paid the rent for May and June, 2018 because she thought the Landlord would not accept it because if he did accept it may re-instated the tenancy. The Tenant said she is willing to pay the June rent but not the May rent because she believes the Landlord cut her phone line so that she could not return calls about new rental properties that she was looking at.

As for the pet deposit the Tenant said she did not tell the Landlord that she had pets because the tenancy was short term and she did not think it would matter.

With regard to the false alarms the Tenant said it is not her responsibility because she had to access the laundry room to do her laundry and when she banged on the door this may have set the alarm off. The Tenant said the laundry was in the Landlord's part of the house and the Landlord kept the door locked.

The Landlord said in closing the Tenant gave him written notice to move out and then the Tenant did not move and the Tenant stopped paying the rent. The Landlord said he wants to end the tenancy and collect the moneys owed to him.

The Tenant said in closing the Landlord cut her phone line and turned the power off on occasion so she does not feel the Landlord should be awarded the monetary claim that he has applied for.

### Analysis

Section 45 of the Act says: (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I accept the Landlord's testimony and evidence that the Tenant gave proper notice to end the tenancy and then did not move out. Pursuant to sections 45 and 55 of the Act, award the Landlord an Order of Possession effective 2 days after service of the Order on the Tenant.

Further Section 26 of the act says 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.

I find the Tenant is an over holding tenant and the Tenant did not have the right under the Act to withhold part or all of the rent for May 2018 and June 2018, therefore I find in favour of the Landlord for the unpaid rent of \$650.00 each month of May 2018 and June 2018 in the amount of \$1,300.00.

With regard to the broken window as both parties agree the Tenant broke the window and the Landlord has submitted a paid receipt for \$464.53, I award this amount to the Landlord for damages.

As there was no move in condition inspection report completed at the start of the tenancy it is unclear if the door frame was damaged at the start of the tenancy or not. When a landlord does not complete a move in condition inspection report at the start of a tenancy there is no way to determine or measure damage or the amount of damage that may have happened in the tenancy because there is no base line to compare the damage too. Consequently I dismiss the Landlord's claim for \$300.00 for the door frame damage as there is no evidence to show the condition of the door frame at the start of the tenancy.

With regards to the pet deposit it is the Landlord's responsibility to collect deposits at the start of the tenancy or when a pet is brought into a tenancy. If the landlord does not collect the deposit then the landlord forfeits his/her opportunity to hold a pet or security deposit. As a result I dismissed the Landlord's claim to collect a pet deposit at the end of a tenancy.

Further I find there is a lack of evidence to clearly show the Tenant caused the false alarm in the rental complex as the alarm is in the Landlord's portion of the unit. I dismissed the Landlord's claim for \$100.00 for that cost of the false alarm.

As the Landlord has been partially successful in this matter, he is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,350.00	
	Broken window	\$ 464.53	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$1,914.53
Less:	Security Deposit	\$ 325.00	
	Subtotal:		\$ 325.00
	Balance Owing		\$1,589.53

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,589.53 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 27, 2018

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Residential Tenancy Branch