



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      CNR  
MNDCL-S, MNRL-S, OPR, FFL

### Introduction

This teleconference hearing was scheduled in response to cross-applications under the *Residential Tenancy Act* (the “Act”). The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”). The Landlord applied for a Monetary Order for Unpaid Rent, a Monetary Order for damages or compensation, for an Order of Possession based on a 10 Day Notice 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 11 minutes that the phone line remained open. The agent for the Landlord was affirmed to be truthful in her testimony. She confirmed that she received the Notice of Dispute Resolution Proceeding package from the Tenant and that the Landlord’s Notice of Dispute Resolution Proceeding package, along with a copy of their evidence was sent to the Tenant by registered mail. The Tenant did not submit any evidence prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be set aside?

Is the Landlord entitled to an Order of Possession?

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

Is the Landlord entitled to a Monetary Order for damages and/or compensation?

Should the Landlord be awarded the recovery of the filing fee paid for this Application for Dispute Resolution?

### Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy. The tenancy began on September 11, 2013. Current monthly rent is \$807.00 and a security deposit of \$370.00 was paid at the outset of the tenancy.

The Landlord testified that a previous hearing took place in May 2018, in which a settlement agreement was reached to end the tenancy on July 31, 2018. An Order of Possession was issued to the Landlord to serve on the Tenant should they not vacate the unit by July 31, 2018.

The Landlord stated that after the previous hearing, the Tenant did not pay rent for June or July 2018. They issued a 10 Day Notice on June 2, 2018 which was served the same day by posting it on the Tenant's door.

The 10 Day Notice stated that rent in the amount of \$807.00 was not paid on June 1, 2018 as due. The effective end of tenancy date of the 10 Day Notice was stated as June 15, 2018.

The Landlord has applied for an Order of Possession, as well as a Monetary Order for the two months of unpaid rent and a \$25.00 per month late fee.

The Landlord has also claimed \$90.00 for carpet cleaning in the unit at the end of the tenancy as stated in the tenancy agreement.

The tenancy agreement was submitted into evidence and notes the terms regarding late rent payment fees, as well as the carpet cleaning fee upon moving out.

The Landlord testified that in the previous hearing, as part of the settlement agreement, the Landlord was allowed to retain \$229.16 from the security deposit, leaving an amount of \$140.84 remaining. The decision outlining the settlement agreement, dated May 8, 2018, was submitted into evidence by the Landlord.

### Analysis

I refer to Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* which states that if a party fails to attend the hearing, the hearing may continue in their absence and the application may be dismissed.

As the Tenant did not call into the hearing to present their claim to cancel the 10 Day Notice, I dismiss their application without leave to reapply.

Section 55(1) of the *Act* states that if a tenant's application to cancel a notice to end tenancy is dismissed, and the notice to end tenancy complies with Section 52 of the *Act*, an Order of Possession must be granted to the landlord.

Upon review of the 10 Day Notice submitted into evidence, I find that it is in compliance with Section 52 of the *Act* and therefore I grant the Landlord a two day Order of Possession to be served on the Tenant.

Although an Order of Possession has already been granted through a settlement agreement for July 31, 2018, the Landlord confirmed that this has not yet been served on the Tenant and as the Tenant has not paid rent, I find that the Landlord is entitled to a two day Order of Possession.

As for the Landlord's Monetary claims, I accept the undisputed testimony of the Landlord that rent has not been paid for June and July 2018 in the amount of \$807.00 per month, for a total amount owing of \$1,614.00.

As the Landlord has also claimed \$50.00 in late rent payment fees, I look to Sections 7(1)(d) and 7(2) of the *Residential Tenancy Regulation* which state that a late payment fee of up to \$25.00 can be charged as long as it is outlined in the tenancy agreement.

I determine that the tenancy agreement, signed by the Landlord and Tenant on September 11, 2013, states that a late payment fee of \$25.00 will be charged. As such, I find that the Landlord is entitled to \$25.00 each for the months of June and July 2018 in which rent was not paid.

The Landlord has also claimed \$90.00 for carpet cleaning as stated in the tenancy agreement that this fee is due upon vacating the rental unit. However, I note that compensation can only be awarded if a loss has occurred. As the tenancy has not yet

ended, I find that the Landlord's claim is premature, and therefore I dismiss the Landlord's claim for \$90.00 compensation.

As the Landlord was partially successful in their claim, I 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 38(4)(b) of the *Act*, I allow the Landlord to retain the security deposit towards the total compensation owed. As per the testimony of the Landlord, and the settlement agreement of May 8, 2018, the Landlord has \$140.84 of the security deposit which will be applied towards the total amount owing.

A Monetary Order will be issued to the Landlord in the amount outlined below.

#### *Monetary Order Calculations*

June 2018 rent	\$807.00
June 2018 late payment fee	\$25.00
July 2018 rent	\$807.00
July 2018 late payment fee	\$25.00
Filing fee	\$100.00
Less Security deposit	(\$140.84)
<b>Total owing to Landlord</b>	<b>\$1,623.16</b>

#### Conclusion

The Tenant's application is dismissed without leave to reapply.

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 **\$1,623.16** for rent and late fees owed for June and July 2018, 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: July 23, 2018

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Residential Tenancy Branch