



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to section 67;
- authorization to retain the tenant's security deposit in part satisfaction of their monetary claim, 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 for 14 minutes in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent (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.

The landlord testified that she served the tenant the notice of dispute resolution package and her amendment package by registered mail on June 4, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. I find that the tenant was deemed served with these packages on June 9, 2018, five days after their mailing, in accordance with sections 88, 89 and 90 of the *Act*.

### Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to retain the tenant's security deposit in part satisfaction of their monetary claim, pursuant to section 38 of the *Act*?
4. Are the landlords entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided undisputed testimony that her father purchased the rental property in question on February 1, 2018 and that the tenant came with the property. The landlord testified that the tenancy agreement provided by the previous landlord states the following:

- this tenancy began on February 4, 2017;
- rent in the amount of \$2,000.00 is payable on the first day of each month; and
- a security deposit of \$1,000.00 was paid by the tenant.

The landlord testified that written tenancy agreement was signed by the tenant and the previous landlord, this agreement was not submitted for this application.

The landlord testified that the tenant paid rent for February 2018 but has not paid any rent for March, April, May, June, or July 2018.

The landlord testified that on April 30, 2018 a 10 Day Notice to End Tenancy for unpaid rent, with an effective date of May 10, 2018 (the "10 Day Notice"), was posted on the tenant's door. The 10 Day Notice stated that the tenant failed to pay rent in the amount of \$4,000 that was due on April 1, 2018.

### Analysis

I find that the tenant was deemed served with the 10 Day Notice on May 3, 2018, five days after its posting, in accordance with sections 88 and 90 of the *Act*.

Section 53 of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. In this case, the earliest date that complies with section 46 of the *Act* is May 13, 2018. I find that the corrected effective date of the 10 Day Notice is May 13, 2018.

The tenant failed to pay the March and April 2018 rent within five days of receiving the 10 Day Notice. The tenant has not made an 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 his tenancy on the corrected effective date of the notice.

In this case, the corrected effective date required the tenant to vacate the premises by May 13, 2018. As that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement. I find that the tenant was obligated to pay the monthly rent in the amount of \$2,000.00 per month for the months of March, April, May, June and July 2018 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$10,000.00 in unpaid rent.

Since the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,000.00 in part satisfaction of her monetary claim for unpaid rent against the tenant.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service 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 to the landlord under the following terms:

Item	Amount
March 2018 rent	\$2,000.00
March 2018 rent	\$2,000.00
March 2018 rent	\$2,000.00
March 2018 rent	\$2,000.00
March 2018 rent	\$2,000.00
Filing fee	\$100.00
Less security deposit	- \$1,000.00
<b>TOTAL</b>	<b>\$9,100.00</b>

The landlords are 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 18, 2018

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Residential Tenancy Branch