



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

<u>Dispute Codes</u>	Landlord:	MNR OPR FF
	Tenant:	AS CNR OLC RR

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on August 31, 2018 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on August 10, 2018 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order permitting the Tenant to assign or sublet the rental unit;
- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement; and
- an order reducing rent for repairs, services or facilities agreed upon but not provided.

The Landlord and the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony. The Tenant did not attend the hearing. Accordingly, the Tenant’s Application is dismissed, without leave to reapply. It has not been considered further in this Decision.

The Landlord testified the Landlord's Application package was served on the Tenant by registered mail on August 31, 2018. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Tenant is deemed to have received the Landlord's Application on September 5, 2018.

The Landlord was provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It indicated the fixed-term tenancy agreement began on March 15, 2018, and was expected to continue to March 15, 2019. Rent in the amount of \$1,100.00 per month is due on the first day of each month. The Tenant pays 50% of utility charges. The Tenant paid a security deposit of \$550.00, which the Landlord holds.

The Landlord testified the Tenant did not pay rent when due on August 1, 2018. Accordingly, the Landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 8, 2018 (the "10 Day Notice"), which was served on the Tenant in person on that date. The Tenant's Application confirmed receipt of the 10 Day Notice on August 8, 2018. At that time, rent in the amount of \$1,100.00 was outstanding. A copy of the 10 Day Notice was submitted into evidence.

In addition, the Landlord testified the Tenant did not pay rent when due on September 1 and October 1, 2018, and that rent in the amount of \$3,300.00 is currently outstanding. The Tenant continues to occupy the rental unit.

The Landlord also sought to recover the filing fee paid to make the Application.

The Tenant did not attend the hearing to dispute the Landlord's evidence.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Further, section 46 of the *Act* permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receipt of a notice to end tenancy for unpaid rent to pay the overdue rent or dispute the notice by making an application for dispute resolution. Failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, I find the Tenant received the 10 Day Notice on August 8, 2018. Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until August 13, 2018, to dispute the 10 Day Notice by making an application for dispute resolution or pay rent in full. I find that rent has not been paid when due and that \$2,200.00 is outstanding. Rent due on October 1, 2018, has not been considered as the time for payment has not passed. As rent has not been paid when due, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

In addition, I find the Landlord has demonstrated an entitlement to a monetary award of \$2,200.00 for unpaid rent.

Further, the Landlord claimed \$129.72 for unpaid utilities. Section 46(6) of the *Act* permits a landlord to treat unpaid utility charges as unpaid rent if the tenancy agreement requires the tenant to pay utility charges to the landlord and they remain unpaid for more than 30 days after the tenant is given a written demand for payment. While the tenancy agreement confirms the Tenant is obligated to pay 50% of utility charges, I find there is insufficient evidence before me of the amount due, or that the Tenant was given written demand for payment. This aspect of the Landlord's Application is dismissed.

Having been successful, I find the Landlord is entitled to a monetary award in the amount of \$100.00 in recovery of the filing fee. I also find it is appropriate in the circumstances to order that the security deposit held be applied to the amount due to the Landlord. Therefore, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,750.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$2,200.00
Filing fee:	\$100.00
LESS security deposit:	(\$550.00)
<b>TOTAL:</b>	<b>\$1,750.00</b>

### Conclusion

The Tenant's Application is dismissed, without leave to reapply.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,750.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 1, 2018

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Residential Tenancy Branch