



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**Landlord:** OPRM-DR, FFL  
**Tenant:** CNR, MNDCT, OLC, FFT

### Introduction

This hearing dealt with applications by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's building manager, the landlord's assistant and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to cross examine one another and to make submissions. The landlord's building manager (the landlord) stated that he would be the primary speaker for the landlord.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged that they received a copy of the Landlord's Application for Dispute Resolution (Landlord's Application) while the landlord acknowledged receiving a copy of the Tenant's Application for Dispute Resolution (Tenant's Application). Pursuant to section 89 of the *Act*, I find that both parties are found to have been duly served with each other's applications.

The landlord acknowledged receipt of the tenant's evidence which was served with the Tenant's Application. Although the landlord stated that they could not read one of the pages provided by the tenant, I find that the tenant has only submitted document previously exchanged with the landlord. In accordance with section 88 of the *Act*, I find that the landlord is duly served with the tenant's evidence.

The landlord testified that they served their evidence to the tenant by registered mail and provided a copy of the Canada Post Tracking Number to confirm this registered mailing. The tenant disputed receiving this evidence.

As the tenancy agreement and cable/internet agreements were signed by the tenant, I find that I will consider these items provided by the landlord as the tenant is not prejudiced by the consideration of documents that they have signed.

The tenant acknowledged receipt of the 10 Day Notice on September 02, 2018, which was posted to the tenant's door. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on September 02, 2018.

At the outset of the hearing the landlord sought to increase their monetary claim from \$2,500.00 to \$5,000.00 to reflect the tenant's failure to pay \$2,500.00 in monthly rent for October 2018, the additional month of unpaid rent waiting for this hearing.

Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

For the above reason I allow the amendment as this was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to authorization to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties provided written evidence that this tenancy began on August 15, 2018, with a current monthly rent of \$2,500.00, due on the first day of the month. The landlord confirmed that they currently retain a security deposit in the amount of \$1,250.00.

The tenant provided a copy of the signed 10 Day Notice dated September 02, 2018, for \$2,500.00 in unpaid rent with an effective date of September 15, 2018.

The tenant also provided a copy of a notice regarding the payment for internet/cable from the landlord dated September 06, 2018. On the Tenant's Application the tenant has indicated that they are seeking the return of their security deposit and moving costs.

The landlord provided in evidence a copy of the internet/cable agreement signed between a third party, who is represented by the landlord's building manager, and the tenant.

The landlord testified that the tenant has not paid the monthly rent for September 2018 and October 2018.

The assistant stated that the tenant had given a check for the September 2018 rent. The assistant that, upon being politely reminded about payment for internet/cable services that the landlord accepted on behalf of a third party, the tenant became upset. The assistant testified that the tenant took the cheque back from the assistant, ripped it up and expressed displeasure that the assistant had talked to him about the internet/cable payment.

The tenant confirmed that they not paid the monthly rent for September 2018 and October 2018 due to his position that the landlord was asking for more money than they were entitled to, based on their rental agreement. The tenant offered to pay the monthly rent for the two months if the tenancy were allowed to continue.

The landlord indicated that they were not seeking to continue the tenancy and were seeking an Order of Possession in addition to a monetary order for unpaid rent and the filing fee for the Landlord's Application.

### Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Residential Tenancy Regulations (Regulations)* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the tenant has signed a separate agreement for internet/cable services with a third party that is unrelated to the payment of the monthly rent. I find that there is nothing in the Act which prevents the landlord from acting on behalf of this third party and that the tenant has failed to provide any evidence that they have suffered any type of monetary loss due to the actions or neglect of the landlord in violation of the Act.

I find that the landlord made no indication that the payment of the internet/cable bill was related to the monthly rent and that the tenancy depended this internet/cable agreement. I find that the tenant did not actually provide any documentary evidence they have paid any money to this third party for internet/cable services or that they have not been receiving the internet/cable services that they have not provided evidence that they have paid for or that they have incurred any loss for moving expenses. Even if the tenant had provided evidence of these losses, I have found that the tenant has not demonstrated any violation of the Act, regulations or tenancy agreement on the part of the landlord.

In addition, as this tenancy has not ended, I find that the tenant has not demonstrated that they have any legal entitlement to the security deposit pursuant to section 38 of the Act.

For the above reasons, the tenant's Application for compensation and for the landlord to comply with the Act is dismissed, without leave to reapply.

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found the 10 Day Notice was duly served to the tenant on September 02, 2018, I find the tenant had until September 07, 2018, to dispute the 10 Day Notice or to pay the full amount of the arrears.

Having reviewed the evidence and affirmed testimony, I find that the tenant submitted the Tenant's Application on September 10, 2018, outside the five day time limit permitted under section 46 (4) the Act. I further find, based on the tenant's testimony, that the tenant has confirmed that they did not pay the monthly rent within the five days allowed by the Act or provide any evidence that they had any legal authority under the Act to withhold any rent.

For the above reasons, I dismiss the Tenant's Application to cancel the landlord's 10 day Notice, without leave to reapply.

As the tenant was not successful in the Tenant's Application I dismiss their request to recover the filing fee, without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the *Act*. I find that the 10 Day Notice complies with section 52 of the *Act*. For these reasons, I grant a two day Order of Possession to the landlord.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. I find that the tenant owes the monthly rent for September 2018 and October 2018 in the total amount of \$5,000.00. As the landlord was successful in the Landlord's Application, I allow their request to recover the filing fee from the tenant.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) or any occupant on the premises 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 section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenant's security deposit and to recover the filing fee:

Item	Amount
September 2018 Rent	\$2,500.00
October 2018 Rent	2,500.00
Less Security Deposit	-1,250.00
Filing Fee for this application	100.00
<b>Total Monetary Order</b>	<b>\$3,850.00</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 29, 2018

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Residential Tenancy Branch