



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF

### Preliminary matter

At the start of the conference call it was explained to the parties that the Landlord's application was originally submitted under the Direct Request process. As this is a process with only paper submissions, all documents **must** be submitted or the application is converted to a participatory hearing. The Landlord did not submit the tenancy agreement so this application was converted to a participatory hearing.

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery by her son on September 15, 2018. The Tenant confirmed service of the hearing package. 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. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on November 15, 2017 as a 1 year fixed term tenancy with an expiry date of November 15, 2018. Rent is \$1,000.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$500.00 at the start of the tenancy.

The Landlord said that the Tenant did not pay \$1,000.00 of rent for August, 2018 when it was due and as a result, on August 27, 2018 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 27, 2018 on the door of the Tenant's rental unit. The Landlord submitted a Proof of Service signed by a witness that the 10 Day Notice to End Tenancy for Unpaid Rent was served on August 27, 2018. The Landlord said the Tenant has unpaid rent for September and October, 2018 as well. The Landlord said the total unpaid rent is \$3,000.00.

The Landlord further indicated that she wants to end the tenancy as soon as possible.

The Landlord also requested to recover the \$100.00 filing fee for this proceeding.

The Tenant said that there is unpaid rent for August, September and October, 2018, but she tried to pay the rent and the Landlord's son would not accept it. The Tenant said she did not receive the 10 Day Notice to End Tenancy or Unpaid Rent and she did not make an application to dispute the Notice when she received the hearing package.

The Tenant said this tenancy is not working for her and her family and they are trying to move out as soon as they are able to.

The Landlord said in closing that she is requesting an Order of Possession for as soon as possible and a monetary order for unpaid rent.

The Tenant said in closing that they are trying to move out as soon as possible as this tenancy is not working.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on August 30, 2018. I accept the Landlord's proof of service signed by a witness dated September 13, 2018. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than September 5, 2018.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for August, September and October 2018, in the amount of \$3,000.00.

As the Landlord has been successful in this matter, she 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:	\$3,000.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$3,100.00
Less:	Security Deposit	\$500.00	
	Subtotal:		\$ 500.00
	Balance Owing		\$2,600.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$2,600.00 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: October 29, 2018

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Residential Tenancy Branch