



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### 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 Tenants' security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on July 31, 2018. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### 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 Tenants' security deposit?

### Background and Evidence

This tenancy started on November 1, 2017 as a 1 year fixed term tenancy with an expiry date of November 30, 2019. Rent is \$2,000.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$1,000.00 on November 13, 2017.

The Landlord said that the Tenant did not pay \$2,000.00 of rent for July, 2018 when it was due and as a result, on July 13, 2018 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated July 12, 2018 on the door of the Tenants' rental unit. The Landlord said the Tenants have unpaid rent for August and September, 2018 as well in the amount of \$2,000.00 for each month.

The Landlord further indicated that he is unsure if the Tenants are living at the rental unit, but the Landlord requested an Order of Possession for as soon as possible.

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

### 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 July 16, 2018. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 21, 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.

Further, section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the Tenants do not have the right to withhold rent; therefore I award the Landlord the unpaid rent for July, August and September, 2018, in the amount of \$6,000.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants 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 Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$6,000.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$6,100.00
Less:	Security Deposit	\$1,000.00	
	Subtotal:		\$1,000.00
	Balance Owing		\$5,100.00

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$5,100.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: 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: September 18, 2018

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Residential Tenancy Branch