



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

#### Introduction

This matter dealt with an application by the Landlord for An Order of Possession and a Monetary Order for unpaid rent.

This application was originally made through the Direct Request process but was moved to a participatory hearing because the proof of service of the 10 Day Notice to End Tenancy for Unpaid Rent was given to a person not identified as an adult resident and there was a discrepancy in the address on the documents. .

The Landlord said he served the Tenant with the Application and Notice of Hearing (the “hearing package”) by personal delivery on July 18, 2018. 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 in the Tenant’s absence.

As the hearing was moved to a participatory hearing the Landlord requested the security and pet deposits be dealt with as well.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to end the tenancy?
4. Is the Landlord entitled to retain the Tenant's security and pet deposits?

### Background and Evidence

This tenancy started on May 1, 2017 as a month to month tenancy. Rent is \$2,350.00 per month payable on the 1<sup>st</sup> day of each month. A security deposit of \$950.00 and a pet deposit of \$300.00 were paid at the start of the tenancy. The Landlord said the Tenant is living in the rental unit and he is requesting an Order of Possession with an effective date as soon as possible.

The Landlord said that the Tenant did not pay \$2,350.00 for the month of July, 2018 and as a result he issued a 10 Day Notice to End Tenancy for unpaid rent. The 10 Day Notice was delivered in person on July 6, 2018 to an adult that was presumed to be an occupant of the rental unit. The Landlord continued to say that the August and September, 2018 rent in the amount of \$2,350.00 per month has not been paid as well. The Landlord requested compensation for a total of unpaid rent in the amount of \$7,050.00.

The Landlord continued to say he would like to retain the security deposit and pet deposit as partial payment of the unpaid rent and he would also be requesting to recover the \$100.00 filing fee.

### Analysis

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.

The Tenant did not have the right under the Act to withhold part or all of the rent for July, August and September, 2018; therefore I find in favour of the Landlord's claim for the unpaid rent of \$7,050.00.

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 on the day it was personally serviced, or on July 6, 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 11, 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.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the unpaid rent of \$7,050.00 and the filing fee of \$100.00. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security and pet deposits in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 7,050.00	
	Filing fee	<u>\$ 100.00</u>	
	Subtotal:		\$ 7,150.00
Less:	Security Deposit	\$ 950.00	
	Pet Deposit	<u>\$ 300.00</u>	
	Subtotal:		\$ 1,250.00
	Balance Owing		<u>\$ 5,900.00</u>

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$5,900.00 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: September 11, 2018

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Residential Tenancy Branch