



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### 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 July 25, 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 July 20, 2018, as amended by an Amendment to an Application for Dispute Resolution, dated August (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order cancelling a notice to end tenancy for cause; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified the Landlord's Application package and documentary evidence was served on the Tenant by registered mail. The Tenant acknowledged receipt. The Tenant testified the Landlord was served with the Tenant's Application package and an Amendment to an Application for Dispute Resolution (the "Amendment") by registered mail. The Landlord acknowledged receipt. Neither party raised any issue with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full 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.

#### Preliminary and Procedural Matters

During the hearing, the parties agreed to amend the Landlord's name as it appears in the Landlord's Application, which I do pursuant to section 64 of the *Act*.

#### 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?
4. Is the Tenant entitled to an order cancelling the notice to end tenancy for unpaid rent or utilities?
5. Is the Tenant entitled to an order cancelling the notice to end tenancy for cause?
6. Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

A copy of the signed tenancy agreement between the parties was submitted into evidence. It indicated the tenancy began on November 1, 2016. The tenancy agreement indicated that rent in the amount of \$2,500.00 per month is due on the first day of each month. However, the Tenant and the Landlord acknowledged the Landlord has regularly accepted payments of \$1,500.00 of the first day of each month and \$1,000.00 on the fifteenth day of each month. The Tenant paid a pet damage deposit of \$1,500.00, which the Landlord holds.

The Landlord testified the Tenant did not pay rent when due on July 1, 2018. Specifically, the Tenant made partial payments on July 2 (\$600.00), July 6 (\$900.00), and July 16, 2018 (\$500.00). As of July 16, 2018, rent in the amount of \$500.00 remained outstanding. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 16, 2018 (the "10 Day Notice"). The Tenant's Application confirms receipt on the same date. A copy of the 10 Day Notice was submitted into evidence.

The Landlord testified further that the Tenant paid rent in August 2018, but has not paid any rent for the month of September 2018. According to the Landlord, rent in the amount of \$3,000.00 is outstanding.

The Tenant testified that rent for July 2018 was paid in full. However, she acknowledged that no rent has been paid for the month of September 2018. The Tenant provided several reasons for withholding this rent. First, the Tenant testified that her dog was attacked, resulting in an \$800.00 vet bill. Second, the Tenant testified that she has been struggling financially. Third, the Tenant suggested she should not have to pay rent in full for the month of September 2018 because the Landlord asked her to remove her horses. Although 2 horses remain on the rental property, the other three have been moved to another location at some cost to the Tenant. The Landlord denied that he asked the Tenant to remove her horses from the property. Fourth, the Tenant testified that the Landlord's goats share the field with her horses, resulting in additional work for her.

### Analysis

Based on all of the above, the evidence and unchallenged 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, the Landlord testified that rent in the amount of \$3,000.00 is currently outstanding. Although the Tenant testified that rent was paid in full for the month of July 2018, I find it is more likely than not that rent was not paid in full as alleged by the Tenant, and remains outstanding. The Tenant did not refer me to any documentary evidence in support of payment. In addition, the Tenant confirmed that no rent has been paid for September 2018 but provided a number of reasons for withholding rent. However, I find the reasons provided by the Tenant did not give rise to a right under the *Act* to deduct rent. As rent remains unpaid, 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 \$3,000.00 for unpaid rent. Having been successful, I also grant the Landlord a monetary award in the amount of \$100.00 in recovery of the filing fee. In the circumstances, I find it is appropriate to order that the Landlord retain the pet damage deposit in partial satisfaction of the Landlord's claim. Therefore, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,600.00, which is comprised of \$3,000.00 in unpaid rent and \$100.00 in recovery of the filing fee, less the pet damage deposit of \$1,500.00.

In light of my findings above, it has not been necessary to consider the Tenant's Application to cancel a notice to end tenancy for cause. The Tenant's Application is dismissed, without leave to reapply.

### 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 \$1,600.00. 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: September 14, 2018

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Residential Tenancy Branch