



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR-S, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agents (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord claims that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on August 3, 2018 and has provided a copy of the Canada Post Customer Tracking label as confirmation. I accept the undisputed affirmed evidence of the landlord and find that although the tenant did not attend, the tenant is deemed sufficiently served as per section 90 of the Act.

At the outset, the landlord stated that a partial rent payment of \$1,175.00 was made by the tenant and seeks to amend the monetary claim by lowering it to \$2,125.00. As the monetary claim is being lowered than the amount applied for, I find no prejudice to the tenant in allowing the monetary amendment.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 1, 2017 on a fixed term tenancy ending on October 31, 2019 as per the submitted copy of the signed tenancy agreement dated September 17, 2017. The monthly rent is \$1,100.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$550.00 was paid.

The landlord seeks an order of possession and an amended monetary order amount for unpaid rent of \$2,225.00 which consists of:

|             |                                     |
|-------------|-------------------------------------|
| \$1,100.00  | Unpaid Rent, July 2018              |
| -\$1,175.00 | Partial Rent Payment, July 31, 2018 |
| \$1,100.00  | Unpaid Rent, August 2018            |
| \$1,100.00  | Unpaid Rent, September 2018         |
| \$2,125.00  | Total Unpaid Rent                   |

The landlord claims that the tenant was served with a 10 Day Notice to End Tenancy issued for Unpaid Rent (the 10 Day Notice) dated July 9, 2018 by posting it to the rental unit door on July 9, 2018. The 10 Day Notice states that the tenant failed to pay rent of \$1,100.00 that was due on July 1, 2018 and sets out an effective end of tenancy date of July 19, 2018.

The landlord stated that the tenant made a partial rent payment of \$1,175.00 on July 31, 2018 and that a notice was issued to the tenant that the payment was being accepted "use and occupancy only not reinstating the tenancy". The landlord stated that no further rent payments have been made by the tenant as of the date of this hearing.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of the landlord and find that the tenant was served with the 10 Day Notice dated July 9, 2018 by posting it to the rental unit door.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice on July 9, 2018. Although the tenant made a partial rent payment of \$1,175.00 on July 31, 2018 past the effective end of tenancy date of July 19, 2018, notice in writing was given to the tenant on August 1, 2018 that the payment was received for “use and occupancy only not reinstating the tenancy”. In accordance with subsection 46(5) of the Act, the tenant’s failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by July 21, 2018. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

I find based upon the undisputed affirmed evidence of the landlord that the tenant failed to pay rent for July, August and September of 2018 while still occupying the rental premises. The tenant is credited with the \$1,175.00 partial payment from the landlord’s original monetary claim of \$3,300.00 to the amended amount of \$2,125.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. The landlord has established a total monetary claim of \$2,225.00.

In offsetting this claim, I authorize the landlord to retain the \$550.00 security deposit in partial satisfaction of this claim.

### Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$1,675.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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 06, 2018

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Residential Tenancy Branch