



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gurdev Holdings Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MNR, MNSD, OPR, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38;
3. An Order of Possession - Section 55; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing in person on September 14, 2018 in accordance with Section 89 of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retain the security deposit?

### Background and Evidence

The Landlord does not have a copy of a written tenancy agreement. The Landlord states that the unit was taken over by the Landlord in February 2018. Rent of \$500.00 is payable on the first day of each month. The Landlord provides a copy of a receipt dated January 15, 2018 indicating collection of the security deposit of \$250.00 and a half months rent.

On August 1, 2018 the Tenant paid only \$60.00 for rent and on August 15, 2018 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the rental unit door. The Notice sets out that rent of \$440.00 due August 1, 2018 was unpaid and carries an effective and automatically corrected move-out date of August 28, 2018. The Tenant did not dispute the Notice and has not moved out of the unit. Following receipt of the Notice the Tenant paid rental monies as follows:

- \$600.00 on August 29, 2018;
- \$100.00 on September 20, 2018; and
- \$500.00 on October 1, 2018.

The Landlord gave the Tenant receipts for each of these payments indicating that the monies were collected for "use and occupancy only". The Landlord claims \$240.00 as the remaining outstanding rent.

#### Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Section 90(c) of the Act provides that a document that is served on the door is deemed to be received three days after the document is so placed. Section 55(2) of the Act provides that where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired, a landlord may request an order of possession. Based on the Landlord's undisputed evidence that the Notice was served on the door of the rental unit on August 15, 2018 I find that the Tenant is deemed to have received the Notice on August 18, 2018 and that the Tenant therefore had until August 23, 2018 to pay the full amount of \$440.00 set out on the Notice. As the Tenant did not dispute the Notice, did not pay the outstanding rent indicated on the Notice within the time required, has not moved out of the unit, and was given receipts for use and occupancy for additional rent payments made after the effective date of the Notice, I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that 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. Although there is no written tenancy agreement I accept that an oral tenancy agreement exists. Based on the undisputed evidence of the terms of rent payable and the evidence of unpaid rent, I find that the Landlord has substantiated an entitlement to **\$240.00** in unpaid rent.

As the Landlord's claims have been successful I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$340.00**. Deducting the security deposit plus zero interest of **\$250.00** leaves **\$90.00** owed by the Tenant to the Landlord.

#### Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I order** that the Landlord retain the **deposit** and interest of \$250.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$90.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 29, 2018

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Residential Tenancy Branch