



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 5038 Montrose Inc  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution. A participatory hearing was held on September 28, 2018. The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the tenant for the cost of this application.

The Landlords and the Tenant both attended the hearing and provided testimony. The Tenant confirmed receipt of the Landlords' application and evidence and did not take issue with the service of these documents. The Tenant did not submit any documentary evidence.

Both parties were provided the 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the landlords entitled to an order of possession for unpaid rent or utilities?
2. Are the landlords entitled to a monetary order for unpaid rent or utilities?
3. Are the landlords entitled to recover the filing fee from the tenant for the cost of this application?

### Background and Evidence

Both parties agree that monthly rent is \$750.00 and is due on the first of the month. The parties also agree that the Landlords hold a security deposit in the amount of \$375.00.

The Landlords testified that she served the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) by posting it to the door of the rental unit on July 19, 2018. The Landlords took a photo of this, and also brought a third party as a witness, who signed a proof of service document. The Tenant stated that he did not recall the actual day he received this Notice. Although the Notice showed that \$780.00 was outstanding, this was a typo and the amount owing at that time was \$750.00, which was July's rent. The Tenant acknowledged that rent was \$750.00 and that he still owes \$750.00 in outstanding rent.

The Landlord provided oral testimony and documentary evidence with respect to rent payments and accruals. This evidence is summarized as follows:

<b>Date</b>	<b>Item</b>	<b>Amount Due</b>	<b>Amount Paid</b>	<b>Accrued Balance Owing</b>
July 1, 2018	Rent Due	\$750.00		\$750.00
August 1, 2018	Rent Due	\$750.00		\$1,500.00
August 5, 2018	Rent Payment		\$750.00	\$750.00
September 1, 2018	Rent Due/Payment	\$750.00	\$750.00	\$750.00
<b>Total Accrued Balance</b>				<b>\$750.00</b>

The Tenant was provided the opportunity to present evidence and to respond to the above information from the Landlords. The Tenant acknowledges that he still owes the Landlord \$750.00 as of this hearing. The Tenant stated that sometimes he will pay by e-transfer, and sometimes he withdraws the cash. The Tenant also stated that he was going to make an additional payment of \$750.00 on August 6, 2018, but that the Landlord had filed an application for dispute resolution against him. The Tenant suggested that when he became aware of this, it impacted his motivation to make the payment. The Tenant stated that he has the money in his account, but the dispute resolution proceedings have caused some communication breakdown.

The Landlord stated that the Tenant is late paying rent every month, and the Tenant stated that he always has the money ready, but the Landlord never comes to collect it. The Tenant stated he had evidence available as to the withdrawals and debits from his account but he stated he did not prepare them for this hearing.

### Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant owed \$750.00 in past due rent at the time the Notice was issued on July 19, 2018. The Landlords issued the Notice by posting it to the door of the rental unit on July 19, 2018 (and provided proof of service). Although the Tenant did not recall exactly when he received the Notice, I find the Tenant is deemed to have received Notice on July 22, 2018, 3 days after it was posted, pursuant to section 90 of the *Act*.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the tenant made a partial payment in August of 2018, I note this was not payment in full, and only covered part of the balance owing. As such, I find the Tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the Notice. The Landlords are entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Next, I turn to the Landlords' request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence before me to demonstrate that the Tenant owes and has failed to pay \$750.00 in past due rent. The Tenant acknowledged owing this amount.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were successful in this hearing, I also order the Tenant to repay the \$100.00 fee the Landlords paid to make the application for dispute resolution. Also, pursuant to sections 72 of the *Act*, I authorize

that the security deposit, currently held by the Landlords, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent	\$750.00
Other:	
Filing fee	\$100.00
<b>Less:</b>	
Security Deposit currently held by Agent	(\$375.00)
<b>TOTAL AMOUNT OF ORDER:</b>	<b>\$475.00</b>

### Conclusion

The Landlords are granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlords are granted a monetary order pursuant to Section 67 in the amount of **\$475.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlords may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: October 1, 2018

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Residential Tenancy Branch