



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPE, MNR, FF

### Introduction

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

1. An Order for Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. 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 (the “Materials”) by registered mail on September 7, 2018 and in person on September 21, 2018 in accordance with Section 89 of the Act. I accept the Landlord's evidence that the Tenant was served with the amended application (the “Amended Application”) by registered mail on September 27, 2018. The Landlord states that the Tenant refused both registered mailings. Given the personal service of the Materials I find that the Tenant received the Materials on September 21, 2018. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Amended Application on September 26, 2018 regardless of not collecting the mail.

The Landlords were 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?

Background and Evidence

The tenancy started on September 1, 2017 on a fixed term to end August 31, 2018. Rent of \$850.00 is payable on the first day of each month and if not paid on the first then rent is \$900.00 for that month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit. The tenancy agreement is with a person who also acted as an employee. The employment ended and on July 30, 2018 the Landlord served the Tenant with a once month notice to end tenancy for end of employment (the "Notice") by posting the Notice on the door of the rental unit. The Tenant did not make an application to dispute the Notice. The Tenant moved out of the unit prior to October 1, 2018 however belongings were left in the unit. The Tenant did not pay any rent for September 2018 and in the amended application the Landlord claims \$900.00.

Analysis

Section 48 of the Act provides that a tenant who receives a one month notice to end tenancy for end of employment has 10 days to dispute the notice. If a tenant who has received a notice under this section does not make an application for dispute resolution within the 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. 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. Given the undisputed evidence that the Tenant received the Notice and did not dispute the Notice I find that the Landlords are entitled to an order of possession.

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. Section 5 of the Act provides that landlords and tenants may not avoid or contract out of this Act or the regulations and any attempt to avoid or contract out of this Act or the regulations is of no effect. Section 7(1) of the regulations provides that a landlord may charge an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. As the tenancy agreement increases the rent by \$50.00 is the rent of \$850.00 is not paid on the first day of the month I find that this increase is a hidden late rent fee. As the increase is greater than allowed for late rent fees, I find that the increase provision is of no effect and may not therefore be enforced. Based on the undisputed evidence that the Tenant did not pay rent for September 2018 I find that the Landlords are entitled to unpaid rent of only **\$850.00**.

As the claim for unpaid rent had merit I find that the Landlords are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$950.00**. Deducting the security deposit of **\$425.00** plus zero interest leaves **\$525.00** owed 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 the Landlord to retain the security deposit plus zero interest of \$425.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$525.00**. 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 18, 2018

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Residential Tenancy Branch