



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord for an Order of Possession due to unpaid rent. The Landlord also requests a monetary order for payment of rent arrears and to retain the security deposit. The Landlord requests an order for payment of the filing fee.

The Landlord and her advocate appeared for the scheduled hearing. The Tenant did not attend this hearing, although I left the teleconference hearing connection open for 10 minutes in order to enable the Tenant to call in for the hearing scheduled at 9:30 a.m. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord, her advocate and I were the only ones who had called into this teleconference.

The Landlord’s advocate explained that the Notice of Hearing and evidence package was served on the Tenant by registered mail through Canada Post on August 11, 2018; a copy of the tracking number was submitted into evidence. I am satisfied that the Tenant was served in accordance with section 89 of the Act, and that the Tenant is deemed to have received the information 5 days after the date of posting, as per section 90 of the Act.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

### Issue to be Decided

Is the Landlord entitled to an Order of Possession, pursuant to sections 46 and 55 of the Residential Tenancy Act ("Act")?

Is the Landlord entitled to a monetary order for payment of rent arrears, pursuant to section 67 of the Act?

Is the Landlord entitled to retain the security deposit pursuant to section 38 of the Act?

Is the Landlord entitled to payment of the filing fee, pursuant to section 72 of the Act?

### Background and Evidence

This tenancy was a verbal agreement to rent the unit for \$950.00 per month commencing October 20, 2017. A \$500.00 security deposit was paid. The Tenant began to fall behind in payments and only paid \$300.00 in March, leaving \$650.00 owing. April rent went unpaid and in May, the Landlord received \$300.00, and a later payment of \$350.00 on May 28<sup>th</sup>. No money has been paid since that time.

The Landlord served a 10-Day Notice to End Tenancy in person on the Tenant on July 14, 2018; a copy of the notice and Proof of Service was submitted into evidence. The amount of the arrears at that time was \$3,800.00. The notice had a stated effective date of July 25, 2018. The Landlord testified that the following rent remains unpaid:

March	\$650.00
April	\$950.00
May	\$300.00
June	\$950.00
July	\$950.00
August	\$950.00
September	<u>\$950.00</u>
TOTAL:	\$5,700.00

The Landlord requests an Order of Possession, an order for payment of the rent arrears of \$5,700.00 and the \$100.00 filing fee. She asks that she be allowed to retain the security deposit in partial satisfaction of that order.

### Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference call by 9:40 a.m. and I am satisfied that she was served with notice of the hearing, the hearing proceeded in her absence.

A tenant is obligated to pay rent when it is due, pursuant to section 26 of the Act:

**26** (1) *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, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Under section 46 of the Act, a landlord may end a tenancy with 10 days written notice for unpaid rent:

**46** (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(4) **Within 5 days** after receiving a notice under this section, the tenant may

(a) **pay the overdue rent**, in which case the notice has no effect, or

(b) **dispute the notice** by making an application for dispute resolution.

(5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

(a) is **conclusively presumed** to have accepted that the tenancy ends on the effective date of the notice, and

*(b) must vacate the rental unit to which the notice relates by that date. [bolding added]*

I have reviewed the 10-Day Notice to End Tenancy and find that it complies with section 52 in form and in content; section 52 requires that the notice be in writing and be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, the grounds for terminating the tenancy and be in the approved form.

There is no evidence before me to suggest that the Tenant filed a dispute notice or paid the arrears. Accordingly, the Tenant is conclusively presumed to have accepted the notice to end the tenancy as of the effective date of the notice. The Landlord is granted an Order of Possession.

I am satisfied that the Landlord has proven rent arrears in the sum of \$5,700.00. I am prepared to allow the Landlord to retain the \$500.00 security deposit in partial satisfaction of the monetary order.

As the Landlord was successful, I am awarding the filing fee of \$100.00. The final monetary order is calculated as follows:

<b>Item</b>	<b>Amount</b>
Rent Arrears	\$5,700.00
Less: security deposit	(\$500.00)
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$5,300.00</b>

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

### Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I further grant an Order for payment of \$5,300.00 to the Landlord by the Tenant forthwith.

The Landlord shall retain the security deposit of \$500.00.

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 3, 2018

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Residential Tenancy Branch