



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

On September 20, 2018, the Landlord submitted an Application for Dispute Resolution by way of an *ex parte* Direct Request Proceeding under the *Residential Tenancy Act* (the “Act”). The Landlord requested an Order of Possession due to unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the filing fee. The Landlord’s evidence for the Direct Request was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing via conference call.

The Landlord’s representatives (referred to as the Landlord) attended the conference call hearing; however, the Tenant did not attend at any time during the 17-minute hearing. The Landlord testified that they served the Tenant with the Notice of Direct Request Proceeding on September 25, 2018, by knocking on the Tenant’s door and attempting to personally serve it to the Tenant. The Tenant refused to accept the notice, and the Landlord subsequently taped the Notice of Direct Request Proceeding to the door of the rental unit. On October 3, 2018, the Landlord taped the adjourned Notice of Hearing, that contained the date and time of today’s hearing, to the front door of the rental unit. I find that the Tenant has been duly served with the Notice of Hearing in accordance with Section 89 the Act.

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, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

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.

### Preliminary Matter

At the beginning of the hearing, the Landlord's name was confirmed and, in accordance with Section 64(3) of the Act, I have amended the Landlord's Application by providing the name of the Landlord versus the management company.

### Issues to be Decided

Should the Landlord receive an Order of Possession for the rental unit, in accordance with Section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

The Landlord provided the following undisputed testimony:

The month-to-month tenancy began on August 1, 2014. The rent is currently \$690.00 and is due on the first of each month. The Landlord collected and still holds a security deposit of \$325.00 and pet damage deposit of \$325.00.

The Landlord testified that the Tenant had been falling behind on her rent and as of September 1, 2018, the Tenant owed \$580.00. On September 7, 2018, the Landlord served the Tenant a 10-Day Notice to End Tenancy for Unpaid Rent, dated September 7, 2018 (the "Notice"), by taping it to the front door of the rental unit. On September 13, 2018, the Tenant provided \$325.00 cash towards the rental arrears. The Notice contained a vacate date of September 20, 2018.

The Landlord stated that the Tenant did not move out of the rental unit, has not paid the balance of rent for September 2018, nor has she paid rent for October or November 2018. The Landlord is requesting a 2-day Order of Possession and a Monetary Order for the unpaid rent up until this date.

### Analysis

Based on undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$690.00 by the first

day of each month and that the Tenant has not paid the full month's rent in September 2018 through to November 13, 2018. As the Tenant is required to pay rent pursuant to Section 26(1) of the Act, I find that the Landlord has established a monetary claim in the amount of \$1,244.00 in outstanding rent.

Section 46 of the Act authorizes a Landlord to 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. The Tenant, within 5 days after receiving the Notice, may pay the overdue rent, in which case the Notice has no effect, or dispute the Notice by making an Application for Dispute Resolution. If the Tenant does not pay the rent or make an Application for Dispute Resolution, 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 90 of the Act specifies that a document that is posted on a door is deemed to be received on the third day after it is posted. I, therefore, find that the Tenant received the Notice on September 10, 2018.

As the Tenant is deemed to have received this Notice on September 10, 2018, I find that September 20, 2018, is the effective vacancy date, as indicated on the Notice by the Landlord.

I have no evidence before me that the Tenant paid their rent or applied for Dispute Resolution, therefore, I find that the Tenant accepted that the tenancy has ended. For the above reasons and because the Tenant is still occupying the rental unit, I grant the Landlord an Order of Possession.

The Landlord was successful with their Application and as such, is entitled to be reimbursed for the filing fee of \$100.00.

The Landlord has established a monetary claim, in the amount of \$1,344.00, which includes \$1,244.00 in unpaid rent and the \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security and pet damage deposit of \$650.00, in partial satisfaction of the monetary claim.

Based on these determinations, I grant the Landlord a Monetary Order for the balance of \$694.00.

Item	Amount
Outstanding rent for September 2018	\$255.00
October 2018 unpaid rent	690.00

13 days of unpaid rent for November 2018 at \$23.00 per day	299.00
Total unpaid rent	1,244.00
Compensation for filing fee	100.00
Total monetary claim for Landlord	1,344.00
Less security deposit	-650.00
<b>Total Monetary Order</b>	<b>\$694.00</b>

### Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served 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.

The Landlord has established a monetary claim, in the amount of \$1,344.00, which includes \$1,244.00 in unpaid rent and the \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security and pet damage deposit of \$650.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$694.00, in accordance with Section 67 of the Act. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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 *Residential Tenancy Act*.

Dated: November 13, 2018

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Residential Tenancy Branch