



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

This hearing was originally convened as a direct request proceeding. In the direct request interim decision dated October 17, 2018, the hearing was adjourned to a participatory hearing to deal with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's property manager 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 property manager and I were the only ones who had called into this teleconference.

The property manager testified that the Notice of Reconvened Hearing, Interim Decision and the landlord's evidence were served on the tenant by registered mail on October 18, 2018. The property manager provided the Canada Post Tracking Number to confirm this registered mailing. I find that the tenant was deemed served with this package on October 23, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

The property manager testified that the landlord's amendment to include a claim for unpaid rent, was served on the tenant by registered mail on November 3, 2018. The

property manager provided the Canada Post Tracking Number to confirm this registered mailing. I find that service of the landlord's amendment was effected on the tenant on November 8, 2018, five days after its mailing, in accordance with section 88 and 89 of the *Act*.

#### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the property manager, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the property manager's claims and my findings are set out below.

The property manager provided the following undisputed testimony. This tenancy began on December 1, 2013 and is currently ongoing. Monthly rent in the amount of \$920.00 is payable on the first day of each month. A joint security and pet damage deposit of \$875.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. Notices of rent increase showing the current monthly rate of \$920.00 were entered into evidence.

The property manager testified that the tenant did not pay rent on October 1, 2018, when it was due and so on October 2, 2018 a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of October 12, 2018 (the "10 Day Notice") was posted on the tenant's door.

The property manager testified that the tenant has not paid any rent for October or November 2018.

### Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on a tenant by posting a copy on the tenant's door. I find that service of the 10 Day Notice was effected on the tenant on October 5, 2018, three days after its posting, in accordance with sections 88 and 80 of the *Act*.

Based on the evidence of the property manager, I find that the tenant failed to pay the October 2018 rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. Pursuant to section 53 of the *Act*, I find that the corrected effective date of the 10 Day Notice is October 15, 2018.

In this case, this required the tenants to vacate the premises by October 15, 2018, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$920.00 on the first day of each month from October - November 2018 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$1,840.00 in unpaid rent.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$875.00 in part satisfaction of their monetary claim for unpaid rent against the tenant.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
October rent	\$920.00
November rent	\$920.00
Filing Fee	\$100.00
Less security deposit	-\$875.00
<b>TOTAL</b>	<b>\$1,065.00</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 26, 2018

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Residential Tenancy Branch