



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROSS HOUSE HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “*Act*”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), and for the recovery of the filing fee paid for this application.

The application was initially filed under the Direct Request process but was adjourned to a participatory hearing to clarify some of the details of the tenancy agreement.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant during the approximately 19 minutes that the conference line remained open.

The Landlord was affirmed to be truthful in his testimony. He stated that the initial Notice of Direct Request and copies of his evidence was served to the Tenant by posting on his door. When the process was adjourned to a hearing and the Landlord added evidence relating to a monetary claim, he provided the Tenant with the Notice of Dispute Resolution Proceeding package and a copy of his new evidence by registered mail.

The registered mail tracking number was submitted into evidence and shows that the package was not claimed. Despite not claiming the mail, I find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*. The registered mail tracking number is included on the front page of this decision. I also note that failure to claim mail is not a ground for review under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters

The Landlord initially applied for an Order of Possession based on a 10 Day Notice. However, he later submitted documentary evidence seeking monetary compensation for unpaid rent. Although no amendment form was submitted, I find that the evidence submitted clearly outlines the Landlord's intention to add a monetary claim. As the Landlord served the Tenant with a copy of his evidence, I find that the Tenant was notified of the Landlord's intent to seek an Order of Possession as well as unpaid rent. As such, I amend the Application for Dispute Resolution to add a monetary claim for unpaid rent. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

### Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Landlord provided undisputed testimony on the tenancy. He submitted into evidence a tenancy agreement that was unsigned by the Tenant stating that the agreement started on November 1, 2016. The Landlord testified that this agreement was drafted after the initial fixed term ended and the Landlord was unsure of when the tenancy began prior to the new agreement. Rent at the time of this new agreement was set at \$550.00, due on the first day of each month. A security deposit of \$200.00 was paid at the outset of the tenancy.

The Landlord stated that rent was increased from \$550.00 to \$572.00 on January 1, 2018. The Notice of Rent Increase was submitted into evidence, dated September 27, 2017 for the rent increase to begin January 1, 2018.

The Landlord testified that beginning in January 2018, the Tenant paid \$472.00 for monthly rent, instead of \$572.00 as stated in the rent increase. The Landlord had mistakenly thought that rent was \$472.00, so did not notice the underpayment until recently. However, he is now seeking the additional rent of \$100.00 per month beginning in January 2018.

The Landlord submitted into evidence rent receipts dated October 3, 2017 and October 20, 2017 showing that the Tenant paid \$550.00 on both dates. A copy of a cheque dated December 1, 2017 was also submitted into evidence showing a payment of \$550.00.

The Landlord stated that rent was paid in September 2018 by a cheque for \$472.00, which was later returned from the bank as insufficient funds. When rent was not paid for October 2018, the Landlord served the Tenant with a 10 Day Notice on October 2, 2018 by posting it on the Tenant's door. The Landlord submitted a Proof of Service document signed by a witness.

The Landlord stated that he did not receive any notification from the Tenant that he had applied to dispute the 10 Day Notice. The Landlord stated that no partial payments towards the rent owing have been made and that rent was unpaid for September 2018 due to the returned cheque, as well as October and November 2018. The Landlord submitted a copy of the returned cheque into evidence as well as a statement from the bank indicating a \$5.00 returned cheque fee.

The Landlord is claiming a total of \$2,521.00, as well as the \$100.00 filing fee. The Landlord submitted a Monetary Order Worksheet into evidence stating an amount of \$472.00 owing for September 2018, plus the \$5.00 returned cheque fee from the bank, \$472.00 owing for October 2018 and \$572.00 owing for November 2018. He has also claimed \$1,000.00, which is \$100.00 of unpaid rent from January to October 2018.

### Analysis

I refer to Section 46(4) of the Act which states that after receiving a 10 Day Notice, a tenant has 5 days in which to pay the rent owing or apply to dispute the notice. I accept the testimony of the Landlord that no payments have been made towards the rent owing and I have no evidence before me that the Tenant applied to dispute the 10 Day Notice.

Therefore, I find that Section 46(5) of the *Act* applies, and the Tenant is conclusively presumed to have accepted that the tenancy ends. Pursuant to Section 55(2) of the *Act*, the Landlord is entitled to an Order of Possession for the rental unit.

As for the outstanding rent owing, I find evidence before me that the cheque provided for September 2018 rent was returned from the Landlord's bank. Therefore, I find that rent for September 2018 remains unpaid. Section 26 of the *Act* states that a tenant must pay rent as it is due. A failure to do so is a breach of the *Act* and the Landlord must be compensated for any resulting losses.

I refer to Section 7(1)(c) of the *Residential Tenancy Regulation* (the "*Regulation*") which states that a landlord may charge to the tenant a service fee charged by the landlord's bank for the return of a cheque. As such, I find that the Landlord is entitled to \$5.00 from the Tenant as compensation for the fee charged for the September 2018 cheque which was returned from the bank.

I also accept the testimony and evidence of the Landlord that rent for October and November 2018 was unpaid. I find the Notice of Rent Increase form submitted into evidence as proof that current rent is \$572.00 per month and therefore award this amount for the months in which rent was not paid.

As for the \$100.00 unpaid rent from January 2018, I accept the Landlord's testimony that the Notice of Rent Increase was served to the Tenant in September 2017 and that rent was increased by \$100.00. However, I have insufficient documentary evidence before me to confirm that between January 2018 and August 2018 the Tenant underpaid rent by \$100.00.

The Landlord submitted a copy of the returned cheque from September 2018 in the amount of \$472.00, but I do not have documentary evidence that confirms that \$472.00 was paid during the months of January to August 2018. I note that in accordance with rule 6.6 of the *Rules of Procedure*, the onus to prove the claim, on a balance of probabilities, is on the party making the claim. Therefore, due to insufficient evidence from the Landlord, I am not satisfied that the Tenant owes an additional \$100.00 per month from January 2018 and decline to award this amount.

As the Landlord was partially successful in his application, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*. The Landlord may retain the security deposit towards the total amount owing and is awarded a Monetary Order in the amount outlined below:

September 2018 rent	\$572.00
Bank returned cheque fee	\$5.00
October 2018 rent	\$572.00
November 2018 rent	\$572.00
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$200.00)</i>
<b>Total owing to Landlord</b>	<b>\$1,621.00</b>

### 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.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,621.00** for rent owed for September, October and November 2018, as well as reimbursement for a bank fee, and the filing fee paid for the Application for Dispute Resolution.

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 30, 2018

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Residential Tenancy Branch