



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that he was handed the 10 Day Notice by the landlord on September 25, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the tenant confirmed that they received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on October 5, 2018, I find that the tenant was duly served with this package in accordance with section 89 of the *Act*. Since the tenant also confirmed that they received a copy of the landlords' written evidence, I find that the landlords' written evidence was served in accordance with section 88 of the *Act*. The tenant did not provide any written evidence for this hearing.

### Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This month-to-month tenancy for a three bedroom unit in the house on the landlord's property began on or about May 1, 2017. There is no written tenancy agreement. Although Landlord AS (the landlord) maintained that the initial arrangement required the tenant to pay \$1,800.00 per month, at the hearing the parties agreed that monthly rent was set at \$1,000.00 per month, payable in advance on the first of the month.

The tenant gave undisputed sworn testimony that the landlord held the tenant responsible for all of the utility payments on this rental property, including those incurred by a tenant living in the corner unit, another in the basement, a couple living in a fifth wheel on the property, and the water bills for a family living in a second house on the property. The tenant said that sometimes these utility bills were as much as \$1,000.00 per month.

The landlord gave undisputed sworn testimony that the original plan was that the tenant would perform work for the landlord associated with the property and/or the landlord's construction company to gain credit towards the monthly rent payments. The landlord testified that one-half of the tenant's \$20.00 per hour wage was to be paid directly to the tenant, while the other half would be used as a set-off towards the tenant's monthly rent payments. The landlord said that this arrangement did not continue past the first couple of months of this tenancy because the tenant did not work on a regular basis and did not perform work to the landlord's satisfaction. The landlord testified that this arrangement resulted in the tenant's working off \$1,400.00 of his rent for the first two months of this tenancy. After the end of June 2017, the landlord gave undisputed sworn testimony that the tenant has not made any payments to the landlord, nor has the tenant worked for the landlord so as to reduce the amount of the monthly rent owing.

The landlords' 10 Day Notice cited \$13,600.00 in rent owing as of September 1, 2018. The landlords' application for a monetary award of \$13,600.00 did not include unpaid rent the landlord said has become owing for October and November 2018, adding a further \$2,000.00 to the amount the landlords were requesting in this application for a monetary award.

The tenant said that they had been trying to locate other places to live, but this was difficult because the tenant kept livestock on the premises. The tenant testified that they had tried to make suitable arrangements with the landlords to remain living on a portion of the premises, and performing work for the landlords but the landlord had refused to enter into such an agreement.

### Analysis

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that 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 their tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by October 5, 2018, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords 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 landlords may enforce this Order in the Supreme Court of British Columbia.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that "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."

In this case, there is undisputed evidence that the tenant has not paid anything towards their rent for this tenancy other than the \$1,400.00 in credit that the landlord confirmed that the tenant had earned by the end of the second month of this tenancy. As I am satisfied that the landlords have supplied sufficient undisputed sworn testimony to demonstrate entitlement to the \$13,600.00 claimed in the landlords' application, which coincides with the amount cited as owing on the 10 Day Notice, I allow the landlords' application for a monetary award of \$13, 600.00. As I am also satisfied that another two months of rent have become owing for October and November 2018, I also allow the landlords a monetary award totaling \$2,000.00 for these two months.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application from the tenant.

### Conclusion

I grant an Order of Possession to the landlords 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 issue a monetary Order under the following terms, which allows the landlords to recover unpaid rent owing and the filing fee for this application:

Item	Amount
Unpaid Rent Identified by the Landlords as Owing as of September 1, 2018	\$13,600.00
Unpaid Rent Owing for October and November 2018	2,000.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$15,700.00</b>

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 16, 2018

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Residential Tenancy Branch