



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR

### Introduction

On September 28, 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 original Landlord, his Counsel, the Property Manager and the Current Landlord of the rental unit attended the conference call hearing; however, the Tenant did not attend at any time during the 22-minute hearing. The Landlord submitted evidence that the Tenant was served the Notice of Hearing via registered mail on October 10, 2018 and that Canada Post left a notice card at the Tenant’s rental unit indicating where and when to pick up the Notice of Hearing. 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 and his representatives.

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.

### Issues to be Decided

Should the Landlord receive an Order of Possession, in accordance with Section 46 and 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 cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

The Landlord provided the following undisputed testimony and evidence:

The one-year, fixed term tenancy originally began on February 1, 2018 and the Tenant was one of two tenants on the Tenancy Agreement. The second tenant has since moved and only the Tenant is occupying the rental unit. The monthly rent of \$1,275.00 is payable on the first of each month. The Landlord collected a security deposit of \$632.50.

The Landlord testified that the Tenant failed to pay the full amount of rent in April 2018 and left an outstanding balance of \$600.00. The Landlord stated that the Tenant fully paid the rent in May 2018; however, failed to pay the rent in June 2018, made a partial payment in July and August 2018 and failed to pay any rent in September 2018. As of September 1, 2018, the Tenant was in rental arrears in the amount of \$3,750.00.

The Property Manager testified that he personally served the 10-Day Notice to End Tenancy for Unpaid Rent, dated September 11, 2018 (the "Notice"), in person, to the Tenant, on September 12, 2018, at the rental unit. The Notice provided information to the Tenant that they needed to pay the balance of the rent within five days, dispute the Notice or move out of the rental unit by September 22, 2108. The Tenant failed to pay rent, did not appear to dispute the Notice and did not move out of the rental unit.

The Landlord provided a copy of a Title Search to support his testimony that the residential property, in which the rental unit is a part, sold on October 2, 2018. The Current Landlord confirmed that the Tenant has failed to pay rent for October and November 2018.

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent. As the Tenant has failed to pay rent for October and November 2018, the Landlord is making a monetary claim for a total of \$6,300.00.

### 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 \$1,275.00 by the first day of each month and that the Tenant has not fully paid rent from April 1, 2018 through to November 19, 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 \$6,300.00 in outstanding rent. (the amount claimed by the Landlord).

The Tenant failed to pay the rent in full, as identified as owing in the Notice, within five days of receiving the Notice. The Tenant has not made Application pursuant to Section 46(4) of the Act within five days of receiving the 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 this tenancy on the effective date of the Notice. In this case, this required the Tenant to vacate the premises by (the amended date of) September 23, 2018. As that has not occurred, I find that the Current Landlord is entitled to a two-day Order of Possession. The Current 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 two days required, the new owner may enforce this Order in the Supreme Court of British Columbia.

I find that the Landlord's Application has merit and should be compensated for the cost of the filing fee in the amount of \$100.00.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$6,400.00, which includes \$6,300.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit of \$632.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$5,767.50, 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.

Pursuant to Section 55 of the Act, I grant the Current 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.

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 19, 2018

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Residential Tenancy Branch