



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPRM FFL**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing. The tenant did not attend at the hearing. I kept the teleconference line open from the time the hearing was scheduled, plus an additional fifteen minutes, to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord was given an opportunity to present affirmed testimony, call witnesses and submit evidence.

The landlord testified the tenant was served by registered mail with the Notice of Hearing and Application for Dispute Resolution sent on October 27, 2018 and provided a Canada Post tracking number in support of service. Pursuant to sections 89 and 90 of the *Act*, I find the tenant was served with the Notice of Hearing and Application for Dispute Resolution five days later, on November 1, 2018.

The landlord requested an amendment to the landlord’s application to increase the monetary order requested to include additional outstanding rent for the months of November and December 2018. The landlord’s application, submitted in October 2018, pre-dated the due date for rent for November and December 2018 and as such the landlord’s claim does not reflect outstanding rent and payments on rent received from the tenant. The landlord claims \$1,450.00 for outstanding rent.

The landlord also requested authorization to apply the security deposit paid by the tenant to the monetary award. The landlord testified the tenant paid a security deposit at the beginning of the tenancy of \$475.00 which the landlord still holds. The tenant has not provided authorization to the landlord to apply the security deposit to outstanding rent. The landlord clarified his claim as follows:

ITEM	AMOUNT
Outstanding rent November 2018	\$500.00
Outstanding rent December 2018	\$950.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$475.00)
<b>TOTAL</b>	<b>\$1,075.00</b>

Section 4.2 of the *Rules of Procedure* provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include outstanding rent for the months of November and December 2018. I also find the tenant could reasonably anticipate the landlord would seek to apply the security deposit to outstanding rent. I find the amendments would not be prejudicial to the respondents. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to increase the landlord's overall claim for the balance of unpaid rent for the months of November and December 2018. I also amended the landlord's application to allow the landlord to apply the security deposit to the monetary award pursuant to section 72.

The landlord requested an amendment to the landlord's application to add a claim for outstanding utilities. This claim is denied as the Ten-Day Notice served on the tenant does not include a claim for utilities and the tenant had no notice of this claim. Further, the landlord did not provide evidence of the amount owing or copies of the utility invoices.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to section 46 of the *Act*?

Is the landlord entitled to a monetary order for outstanding rent pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?  
Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord provided uncontradicted affirmed testimony as the tenants did not appear at the hearing. The parties entered into tenancy agreement beginning March 1, 2018 for monthly rent of \$950.00 payable on the first of the month. The tenants paid a security deposit to the landlord at the beginning of the tenancy of \$475.00. The landlord holds the security deposit. The tenant has not provided written authorization to the landlord to apply the security deposit to outstanding rent.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement;
- A copy the Ten-Day Notice dated October 9, 2018, for \$950.00 in unpaid rent. The Ten-Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of October 19, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the Ten-Day Notice was personally served to the tenant at 9:00 am on October 9, 2018.

The landlord testified that the tenant made a payment on outstanding rent but that a balance remained owing for November 2018 in the amount of \$500.00 and the tenant did not pay the rent due December 1, 2018 in the amount of \$950.00. The landlord claimed total rent outstanding of \$1,450.00.

The landlord testified the tenant owes the following for outstanding rent:

ITEM	AMOUNT
Outstanding rent November 2018	\$500.00
Outstanding rent December 2018	\$950.00
<b>TOTAL</b>	<b>\$1,450.00</b>

The landlord testified the Ten-Day Notice was personally served upon the tenant on October 9, 2018.

The landlord submitted a Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy indicating rent outstanding as stated above at the time the Ten-Day Notice was served, subject to the referenced amendments.

The tenant continues to occupy the unit.

### Analysis

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the landlord served the tenant with the Ten-Day Notice on October 9, 2018 in accordance with section 88 of the *Act*.

I find the tenant did not pay the overdue rent within the five days following service or apply for dispute resolution.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, October 19, 2018, requiring the tenant to vacate the rental unit by that date.

As the tenant continues to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

I therefore grant the landlord an order of possession effective two days after service.

Based on the uncontradicted evidence of the landlord, I grant the landlord a monetary award pursuant to section 67 for outstanding rent in the amount of **\$1,450.00**. As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee.

Further to section 72, I award the landlord authority to apply the security deposit to the monetary award. In summary, I grant the landlord a monetary order for **\$1,075.00** calculated as follows:

ITEM	AMOUNT
Outstanding rent November 2018	\$500.00
Outstanding rent December 2018	\$950.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$475.00)
<b>TOTAL</b>	<b>\$1,075.00</b>

### Conclusion

I grant the landlord a monetary order in the amount of **\$1,075.00**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

I grant the landlord an order of possession **effective two (2) days** after service on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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: December 05, 2018

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Residential Tenancy Branch