



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remi Realty Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MNRL-S, OPR, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) by the Applicant for a monetary order for unpaid rent in the amount of \$4,925.00, an order to keep all or part of the security deposit of \$500.00, an order of possession, following service on the Respondent of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), and for reimbursement of the cost of the filing fee for this hearing. 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.

The Applicant’s Agents, JL and WC, attended the teleconference hearing, as did the Respondent, DA and his girlfriend, BD. The Parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the start of the hearing, the Applicant said that the tenancy agreement for this rental unit was between the Applicant’s company, RR Inc., as Landlord, and the Respondent’s late wife, BL, as Tenant, and that the Respondent was not a Party to the tenancy agreement. The Applicant said the tenancy began on March 1, 2012 for the tenant, BL, and that the monthly rent was \$1,000.00, due on the first day of each month; the Applicant said the tenant, BL, paid a \$500.00 security deposit. The Applicant said the current rent is \$1,065.00 and that the Respondent has not paid full rent to the landlord since May 1, 2018.

The Respondent said that he and the former Tenant, BL, were married and that given their respective ill health, they overlooked having the Respondent added to the tenancy agreement. The Respondent’s wife, BL, has passed away.

The Respondent confirmed that he owes the Applicant an amount of unpaid rent for the months of May 2018 through January 2019, but he did not specify the amount he owes.

The Respondent said he has a new job and that his girlfriend, BD, is also employed and can contribute over \$500 per month toward the unpaid rent owing to the Applicant. However, the

Applicant did not agree to the Respondent's proposal and did not agree to settlement as an option for resolving this matter.

### Preliminary and Procedural Matter

The first issue I must decide is whether the *Act* has jurisdiction over the Parties in order to proceed with the Application.

Both Parties agreed that there is no written tenancy agreement between them and that the Respondent has not paid full rent to the Applicant since May 2018.

The Parties agreed that the Respondent continued to live at the rental unit following the death of his spouse, the named Tenant on the tenancy agreement. The evidence before me is that the Respondent continued to pay rent to the Applicant in exchange for use of the rental unit as the Respondent's home.

### Issues to be Decided

If I find I have jurisdiction in this matter, the issues before me include:

- Is the Landlord entitled to an order of possession based on the 10 Day Notice?
- Is the Tenant entitled to an order cancelling the 10 Day Notice pursuant to section 46 of the *Act*?
- Is the Landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the Tenant's security deposit under the *Act*?
- Is either party entitled to the recovery of the cost of their filing fee under the *Act*?

### Background and Evidence

The Parties agreed that the Respondent ("Tenant") owes the Applicant ("Landlord") an amount of unpaid rent. The Landlord submitted a copy of his Application, which includes a claim for \$4,925.00, but he did not submit a monetary worksheet outlining how he calculated this amount.

### Analysis

Based on the above, I find the following on a balance of probabilities.

First, section 12 of the *Act* states:

#### **Tenancy agreements include the standard terms**

**12** The standard terms are terms of every tenancy agreement

(a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and

(b) whether or not the tenancy agreement is in writing.

[emphasis added]

Further, the definition of “rent” applies and states in section 1 of the *Act*:

**"rent"** means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities,

The evidence before me is that the Parties behaved as if the tenancy agreement for the rental unit between the Applicant and the Respondent were in place subsequent to the death of the tenant named in the written tenancy agreement.

Based on all the evidence before me overall, I find on a balance of probabilities that a tenancy agreement existed between the Parties, as rent was paid or acknowledged by the Tenant to be owing to the Landlord; further, the rental unit was inhabited by the Tenant as his primary address. Accordingly, I find I have jurisdiction to consider the issues presented by the Parties.

In terms of the Landlord’s application for a monetary order, the Landlord did not submit a Monetary Worksheet or provide any details of how he calculated the amount owing by the Tenant. The Tenant said he has paid some rent each month since July 2018, but he did not provide details of those payments, either. As a result, I find there is insufficient evidence before me of the amount of rent that has been paid and the amount owing; accordingly, I dismiss the Landlord’s monetary claim with leave to reapply.

Regarding the Landlord’s application for an order of possession, section 46 of the *Act* states:

**Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

There is no dispute before me that the Tenant owes the Landlord a not insignificant amount of money in unpaid rent from May 2018 through to the present. The Tenant does not dispute that he was served with the 10 Day Notice by registered mail on July 18, 2018, and that he did not pay the amount owing to the Landlord or dispute the 10 Day Notice. Accordingly, pursuant to section 55 of the *Act*, I grant the Landlord an order of possession effective **two days** after service on the Tenant of this order.

As the Landlord's Application was partially successful, I authorize the Landlord to retain **\$100.00** from the Tenant's \$500.00 security deposit in full satisfaction of the Landlord's recovery of the cost of the filing fee. I find the Tenant's security deposit is now \$400.00, as a result, which the Landlord continues to hold.

Conclusion

The Landlord's Application is partially successful.

The Landlord is granted an order of possession effective two days after service on the Tenant. This order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

The Landlord has been authorized to retain \$100.00 from the Tenant's \$500.00 security deposit in full satisfaction of the Landlord's recovery of the cost of the filing fee. The Tenant's security deposit is now \$400.00, as a result.

The Landlord's monetary claim for \$4,925.00 is dismissed with leave to reapply.

This decision will be emailed to the email addresses confirmed by the Landlord and Tenant during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 14, 2019

---

Residential Tenancy Branch