



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SNYDER INVESTMENTS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** FFL MNRL-S OPU

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for:

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

While the landlord's agents DS and BS ("landlord") attended the hearing by way of conference call, the tenant did not. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was both personally served with the landlord's application for dispute resolution hearing package as well as by registered mail on November 21, 2018. The landlords provided a Canada Post tracking number in their evidence. In accordance with sections 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's application on November 26, 2018, five days after its registered mailing.

The landlord testified that the tenant was personally served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 8, 2018 ("10 Day Notice") on the same date. In accordance with section 88 of the *Act*, I find that the tenant duly served with the landlord's 10 Day Notice.

Although the landlord applied for a monetary Order of \$1,125.00 in their initial claim, since they applied another \$6,750.00 in rent has become owing that was not included in their application. I have accepted the landlord's request to amend their original application from \$1,125.00 to \$7,775.00 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover their filing fee for this application pursuant to section 72 of the *Act*?

### **Background and Evidence**

The landlord testified regarding the following facts. This fixed-term tenancy began on June 1, 2018, with monthly rent set at \$2,250.00, payable on the first day of each month. The tenants are responsible for paying \$200.00 additional per month for utilities, which is applied towards outstanding utility bills. The landlord holds a security deposit in the amount of \$1,125.00 for this tenancy. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on November 8, 2018 as the tenant failed to pay the entire monthly rent for October 2018. The tenant had only paid \$1,225.00 for October 2018, and has failed to pay any rent since the 10 Day Notice was issued. The total outstanding rent is \$7,775.00.

### **Analysis**

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of receiving the 10 Day Notice. The tenant did not make an 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 failure of the tenant to take either of the above actions within five days led to the end of this tenancy on November 18, 2018, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by November 18, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

**Section 26** of the *Act*, in part, states as follows:

#### ***Rules about payment and non-payment of rent***

**26 (1)** *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.*

The landlord provided undisputed evidence that the tenant failed to pay the outstanding rent in the amount of \$7,775.00. Therefore, I find that the landlord is entitled to \$7,775.00 in outstanding rent for this tenancy.

The landlord continues to hold the tenant's security deposit of \$1,125.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

### **Conclusion**

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenant or anyone on the premises 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 \$6,750.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, plus the filing fee, and also allows the landlord to retain the tenant's security deposit in satisfaction of the outstanding money owed.

<b>Item</b>	<b>Amount</b>
Unpaid Rent for October 2018	\$1,025.00
Unpaid Rent for November 2018	2,250.00
Unpaid Rent for December 2018	2,250.00
Unpaid Rent for January 2019	2,250.00
Less Security Deposit	-1,125.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$6,750.00</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: January 8, 2019

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Residential Tenancy Branch