



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR OPR FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on September 10, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by L.Q., an agent, who attended the hearing at the appointed date and time, and provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, L.Q. confirmed the Application package was served on the Tenant by registered mail on September 12, 2018. A Canada Post registered mail receipt was submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. Therefore, I find the Application package is deemed to have been received by the Tenant on September 17, 2018. The Tenant did not submit documentary evidence in response to the Application.

On behalf of the Landlord, L.Q. was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

### Preliminary and Procedural Matters

During the hearing, L.Q. confirmed that the correct landlord is the corporate entity named in the tenancy agreement submitted into evidence. Accordingly, pursuant to section 64 of the Act, I find it is appropriate to remove G.C. as a party to the dispute and add the corporate landlord indicated on the tenancy agreement.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order of possession?
3. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

The tenancy agreement submitted into evidence confirmed the tenancy began on May 15, 2016. L.Q. confirmed that rent and parking totalling \$2,750.00 per month are due on the first day of each month. Further, L.Q. confirmed the Tenant paid a security deposit in the amount of \$1,247.50, which the Landlord holds.

On behalf of the Landlord, L.Q. testified the Tenant did not pay rent and parking when due on August 1, 2018. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 30, 2018 (the "10 Day Notice"). The 10 Day Notice confirms the amount outstanding at that time was \$2,744.00, although L.Q. advised this was an error and that the correct amount of rent and parking outstanding at that time was \$2,750.00. Further, L.Q. confirmed the 10 Day Notice was served on the Tenant by leaving a copy in the mail box or mail slot at the Tenant's residence on that date, which she witnessed. A signed Proof of Service document was submitted in support.

According to the Landlord, rent was also not paid when due on September 1, October 1, November 1, and December 1, 2018, and on January 1, 2019. L.Q. testified the amount of rent and parking currently outstanding is \$16,500.00, although the Tenant continues to occupy the rental unit.

The Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

*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.*

[Reproduced as written.]

The Landlord sought an order of possession. In this case, L.Q. testified, and I find, that the 10 Day Notice was served on the Tenant by leaving a copy in the mail box or mail slot at the Tenant's residence on August 30, 2018. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on September 2, 2018. Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until September 7, 2018, to pay rent in full or to dispute the 10 Day Notice by filing an application for dispute resolution. On behalf of the Landlord, L.Q. testified the Tenant has not paid rent when due and continues to reside in the rental unit. There is no evidence before me that the Tenant disputed the 10 Day Notice. As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. Therefore, I find the Tenant is overholding and the Landlord is entitled to an order of possession, which will be effective 2 days after it is served on the Tenant.

The Landlord also sought a monetary order for unpaid rent. In this case, I accept the testimony of L.Q. who advised that rent and parking in the amount of \$2,750.00 per month has not been paid since August 1, 2018, and that \$16,500.00 remains outstanding. Therefore, I find the Landlord has established an entitlement to a monetary award of \$16,500.00 for unpaid rent and parking.

Having been successful, I also grant the Landlord a monetary award of \$100.00 in recovery of the filing fee. I also find it appropriate in the circumstances to permit the Landlord to retain the security deposit held in partial satisfaction of the claim. Pursuant to section 67 of the *Act*, the Landlord order in the amount of \$15,352.50, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$16,500.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,247.50)
<b>TOTAL:</b>	<b>\$15,352.50</b>

### Conclusion

The Landlord is granted an order of possession, which will be effective 2 days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$15,352.50. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 10, 2019

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Residential Tenancy Branch