



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PINNACLE INTERNATIONAL REALTY GROUP II  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “*Act*”), for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the Notice) issued on December 3, 2018, a monetary order for unpaid rent, and to recover the filing fee paid for this application. The matter was set for a conference call.

Two Property Managers (the “Landlord”) and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the 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.

### Issues 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 unpaid rent and utilities?
- Is the Landlord entitled to the return of their filing fee?

### Background and Evidence

The parties testified that the tenancy began on September 1, 2010, as a one-year fixed term tenancy, that rolled into a month to month after the first year. That rent at the beginning of the tenancy was \$1,050.00 and that the current rent is \$1,239.00, to be paid by the first day of each month. The parties to this dispute were in disagreement regarding the amounts the Landlord is holding in a security deposit and pet damage deposit (the "deposits") for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence. The tenancy agreement recorded that a \$525.00 security deposit was paid at the outset of this tenancy.

The Landlord testified that the Tenant was served with the Notice to End Tenancy by attaching it to the front door of the rental unit or other conspicuous place on December 3, 2018, with an effective date of December 14, 2018, and outstanding rent in the amount of \$1,239.00. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant was presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Tenant testified that she had paid the outstanding rent within five days after receiving the Notice and the Notice should not be enforced. The Tenant testified that she had paid \$1,845.00 in deposits for this tenancy, consisting of a security deposit, two pet deposits and a screen deposit and that the Landlord should only be holding a \$1,050.00 deposit for this tenancy; \$525.00 for a security deposit and a \$525.00 for a pet damage deposit. The Tenant testified that she had sent a letter to the Landlord advising her that she had overpaid her deposits, in the amount of \$795.000, for her tenancy and that she would be deducting the overpayment for her December 2018 rent. The Tenant testified the letter included a \$300.00 cheque for the remaining portion of rent due for December 2018.

The Landlord testified that they had received a \$300.00 payment from the Tenant, for the outstanding rent for December 2018, but that there was still \$939.00 outstanding. The Landlord testified that there has been no overpayment of the deposits for this tenancy and that they are only holding a \$500.00 security deposit and a \$500.00 pet damage deposit. The Landlord is requesting an order of position for the rental unit, due to unpaid rent for December 2018.

The Tenant testified that she was locked out of the rental unit as of January 18, 2019, as the Landlord had changed the locks. The Landlord testified that they had changed the locks to the rental unit on January 1, 2018, as they had believed the Tenant had abandoned the rental unit. The Landlord later changed their testimony, testifying that they had changed the locks to the rental unit on January 16, 2018.

The two Property Managers, representing the Landlord during these proceedings, offered conflicting and inconclusive testimony regarding the amount of rent outstanding and the breakdown of how much was outstanding for each month.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

In this case, I find that the Tenant was deemed to have received the Notice on December 6, 2018, three days after it had been posted to the front door of the rental unit.

I acknowledge the Tenant's testimony, that she had overpaid her security and pet damage deposits for this tenancy, and that she had withheld the \$795.00 overpayment from her December 2018 rent. However, even if I were to accept that the Tenant had overpaid her deposits for this tenancy, which I note she had not provided any supporting evidence of, I would have to find that the Tenant had still not paid her full rent for December 2018. The agreed upon testimony is that the monthly rent for this unit is \$1,295.00 if I deduct the claimed deposit overpayment of \$795.00, the Tenant was left owing \$444.00 for the December 2018 rent, not the \$300.00 that the parties agreed had been paid.

Consequently, I find that the Tenant has not paid the full rent or disputed the Notice and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a Landlord is entitled to request an order of possession when a tenant has not paid the rent and has not disputed the Notice. Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the Landlord was not able to testify as to how much rent was outstanding for this tenancy, I must dismiss, with leave to reapply, the Landlord's claim for a monetary order for unpaid rent.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing. I grant permission for the Landlord to retain \$100.00 from the security deposit, in full satisfaction of this award.

### Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenant. The Tenant must be served with this Order. 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.

I dismiss with leave to reapply, the Landlord's application for a monetary order for unpaid rent.

I grant the Landlord permission to retain \$100.00 for the security deposit.

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: February 11, 2019

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Residential Tenancy Branch