



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FOUR WINDS APARTMENTS and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on March 12, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord's Agent, the "Agent", provided affirmed testimony at the hearing. The Tenant did not attend the hearing.

The Agent testified that he personally served the Notice of Hearing along with supporting documentary evidence to the Tenant on January 29, 2019. I find the Tenant received this package this same day.

The Agent has requested to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

### **Amending an application 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, the application may be amended at the hearing.

In consideration of this, I allow the Agent to amend their application to include rent that has accrued since the original application date.

The Agent was provided 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.

### Issues to be Decided

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

### Background and Evidence

The Agent testified that rent, in the amount of \$785.00, is due on the first day of each month. The Agent holds a security deposit of \$387.50.

The Agent testified that he served the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by posting it to the door of the rental unit on January 1, 2019. The Agent clarified that the amount owing at that time was \$970.00 (comprised of \$185.00 from November 2018 and \$785.00 from December 2018). The Agent summarized the Tenants accrued balance as follows:

<b>Date</b>	<b>Item</b>	<b>Amount Due</b>	<b>Amount Paid</b>	<b>Accrued Balance Owing</b>
November 2018	Overdue Rent	\$185.00		\$185.00
December 1, 2018	Rent Due	\$785.00		\$970.00
January 1, 2019	Rent Due	\$785.00		\$1,755.00
February 1, 2019	Rent Due	\$785.00		\$2,540.00
February 11, 2019	Rent Payment		\$185.00	\$2,355.00
February 11, 2019	Rent Payment		\$615.00	\$1,740.00
March 1, 2019	Rent Due	\$785.00		\$2,525.00
<b>Total Accrued Balance</b>				<b>\$2,525.00</b>

### Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does

not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant owed \$970.00 in past due rent at the time the 10 Day Notice was issued on January 1, 2019. The landlord issued the 10 Day Notice by posting it to the door of the rental unit on January 1, 2019, and I find the tenant received the 10 Day Notice on January 4, 2019, 3 days after it was posted, pursuant to section 90 of the *Act*.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the tenant made a partial payment in February of 2019, I note this was not payment in full, and only covered part of the balance owing, and not within the 5 day period. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Next, I turn to the Agent's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence before me to demonstrate that the Tenant owes and has failed to pay \$2,525.00 in past due rent.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the agent was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent as above	\$2,525.00
Other:	
Filing fee	\$100.00

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<b>Less:</b>	
Security Deposit currently held by Landlord	(\$387.50)
<b>TOTAL:</b>	<b>\$2,237.50</b>

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### Conclusion

The landlord is granted an order of possession effective **two 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 and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$2,237.50**. 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) and 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: March 13, 2019

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Residential Tenancy Branch