



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary matter

The Landlord states that its priority is to obtain possession of the unit, confirms that its application seeks \$35,000.00 as the total monetary claim, withdraws its claim for \$35,000.00 in unpaid rent, and claims only unpaid rent of \$5,000.00 for February, March and April 2019.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure provides that if an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. As there is no prejudice to the Tenant with the Landlord’s reduction in the monetary amount being claimed, I allow the amendment of the Landlord’s application to set out only a monetary claim of \$5,000.00 for February, March and April 2019.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amount claimed for rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord states that the tenancy with this Tenant and a co-tenant originally started approximately 5 years ago. The Landlord states that a new tenancy agreement was entered into with the Tenant alone on October 24, 2016 at the location of the Tenant's salon. The Landlord states that at the time of signing the new tenancy agreement the Tenant told the Landlord that she was happy to start afresh with the tenancy as the sole Tenant. The Landlord states that the Tenant was given a copy of this tenancy agreement at the time and was also given a copy of this tenancy agreement as part of the evidence package for this hearing. The Tenant states that she never signed a tenancy agreement in 2016 and only signed a tenancy agreement on October 24, 2014 and that this agreement sets out her son and herself as tenants. The Tenant states that she does not see any copy of a 2016 tenancy agreement in the Landlord's evidence package and that she does not think she has it. The Tenant confirms that she is currently the only Tenant and that her son does not currently reside in the unit. The Landlord states that while the Tenant's son was living with the Tenant the fire department found cannabis in the unit and fined the son \$10,000.00. The Landlord states that he paid this amount for the son. The Landlord states that the Tenant told the Landlord at the time of signing the 2016 tenancy agreement that her son had moved out and that a brother was then living with the Tenant.

The Parties agree as follows that:

- rent of \$2,200.00 is payable on the first day of each month;
- a security deposit of \$1,100.00 was paid in 2014;
- the Tenant did not pay rent on February 1, 2019;

- on February 23, 2019 the Tenant paid \$1,600.00 to the Landlord for February 2019;
- on February 24, 2019 the Tenant was served in person with a 10 day notice to end tenancy for unpaid rent (the "Notice");
- \$600.00 was owed for February 2019 rent at the time the Notice was given;
- the Tenant did not dispute the Notice and did not pay the outstanding February 2019 rent of \$600.00; and
- the Tenant has not moved out of the unit and has not paid rent for either March or April 2019.

The Tenant states that she would like to continue renting the unit or be allowed to move out of the unit at the end of May 2019. Landlord states that she does not wish to enter into a mutual agreement to end the tenancy for the end of May 2019 and seeks an order of possession to be effective April 30, 2019.

#### Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full 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 neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Section 55(2) of the Act provides that where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired, a landlord may request an order of possession. Based on the undisputed evidence that the Tenant received the Notice and neither paid the rent owed or made an application to dispute the Notice I find that the Tenant must move out of the unit. Further as the Landlord made an application to obtain an order of possession I find that in the circumstances the Landlord is entitled to an order of possession.

Section 26 of the Act provides that 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. Whether or not a tenancy agreement was signed by the Tenant in 2016, based on the undisputed evidence of unpaid rent of \$600.00 for February, \$2,200.00 for March and \$2,200.00 for April 2019 I find that the Landlord is entitled to unpaid rent of **\$5,000.00**. As the Landlord has been successful with its application I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,100.00**. Based on the undisputed evidence that the security deposit of \$1,100.00 was paid in 2014 I find that no interest is now payable on that amount. Deducting the **\$1,100.00** security deposit from the Landlord's entitlement leaves **\$4,000.00** owed to the Landlord from the Tenant.

Whether or not the tenancy agreement includes the Tenant's son given the Tenant's evidence that her son does not reside in the rental unit and as the Landlord has only named the Tenant in its application, I make the orders in the Tenant's name alone.

### Conclusion

**I grant** an Order of Possession to the Landlord effective 1:00 p.m. on April 30, 2019. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I order** that the Landlord retain the **deposit** and interest of \$1,100.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$4,000.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 23, 2019

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Residential Tenancy Branch