



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1119118 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OLC, PSF, OPRM-DR, FFL

### Introduction

This hearing dealt with applications from the landlord and Tenant PB (the tenant) and Applicant AM, an occupant in the rental unit, pursuant to the *Residential Tenancy Act* (the *Act*). The landlord identified the tenant as the Respondent in their application for:

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

The tenant and Occupant AM applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they were handed the 10 Day Notice by the landlord on March 21, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As both parties confirmed that they received one another's dispute resolution hearing package by registered mail, I find that both parties were duly served with this package in accordance with section 89 of the *Act*. The tenant confirmed that they had received the landlord's written evidence sent by registered mail. Although the tenant said that they did not receive the landlord's written evidence by

registered mail until April 16, 2019, they said that they had reviewed this material in advance of this hearing. I find that the landlord's written evidence was duly served in accordance with section 88 of the Act. The tenant provided no written evidence for this hearing.

### Preliminary Matters

As Occupant AM did not sign the fixed term tenancy agreement for this tenancy, I advised the parties that Occupant AM had no legal standing as a party to these applications.

At the beginning of this hearing, tenant confirmed that they had advised the landlord in February 2019, they were intending to end this tenancy by May 1, 2019. The landlord submitted written evidence that the landlord had asked the tenant to provide a written notice to end this tenancy, which the tenant provided on March 27, 2019. The tenant said that they had hired a truck to move the possessions of the tenant and the occupant to another province on April 29, 2019. Although the tenant was willing to accept an end to this tenancy by April 29, 2019, the landlord requested an earlier Order of Possession for unpaid rent.

At the beginning of the hearing, the landlord gave undisputed sworn testimony supported by written evidence that no rent has been paid by the tenant for April 2019. The landlord requested an increased monetary award for this unpaid rent, raising the amount of the landlord's requested monetary award from \$560.00 to \$2,310.00, plus the recovery of the landlord's filing fee. As the tenant confirmed that nothing has been paid to the landlord for April 2019, and was clearly aware that this additional amount had become due, I allow the landlord's request to increase the amount of the requested monetary award for unpaid rent to \$2,310.00.

### Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent? Should any other orders be issued with respect to this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

On October 18, 2018, the tenant and the landlord signed a one-year fixed term tenancy agreement that is intended to cover the rental period from November 1, 2018 until October 31, 2019. Monthly rent is set at \$1,750.00, payable in advance on the first of each month. The landlord continues to hold an \$875.00 security deposit paid on October 15, 2018, and an \$875.00 pet damage deposit paid on November 15, 2018. Although neither party referred to any specific provision in the standard residential tenancy agreement signed by the parties with respect to parking, the parties agreed that the monthly rent paid by the tenant included the use of the parking lot of this rental property.

There is undisputed written evidence and sworn testimony that the tenant withheld \$560.00 in monthly rent from the landlord that became owing on March 1, 2019, from their rent payment for that month. The tenant claimed that the landlord was responsible for that amount of damage to the tenant's truck because the parking lot of this rental property was not cleared of snow, leading to damage to their vehicle. At the hearing, the tenant testified that ICBC had advised the tenant that they would not pay for the \$560.00 in repairs to the tenant's truck because the damage occurred on private property. The landlord entered into written evidence a copy of a statement from a snow removal company the landlord had retained for the current season. At the hearing, the landlord said that the company can only clear all of the snow in this lot when the vehicles have vacated the lot. The landlord also said that the lot is very close to the street and accessing the lot is problematic if snow has not yet been cleared on this municipally owned property.

The tenant confirmed that they had not obtained an order from an arbitrator appointed pursuant to the *Act* that would enable them to withhold funds from the rent that became owing on March 1, 2019.

#### Analysis - Notice to End Tenancy

Section 26(1) of the *Act* establishes 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, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.” Section 46(2) of the *Act* requires that “a

notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

I am satisfied that the landlord's 10 Day Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons and as I find that the tenant was without legal authority to withhold any portion of their March 2019 rent from the landlord, I dismiss the tenant's application to cancel the 10 Day Notice and allow the landlord's application for an Order of Possession for unpaid rent. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

#### Analysis - Landlord's Claim for a Monetary Award

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on a balance of probabilities that the tenant is responsible for the landlord's loss of rent for March and April 2019. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

There is undisputed evidence that the tenant did not pay \$560.00 of the rent that was due on March 1, 2019, and did so without any legal authority to do so. In addition, the tenant did not dispute the landlord's sworn testimony that nothing has been paid to the landlord since the 10 Day Notice was issued to the tenant.

Under these circumstances, I find that the landlord is entitled to a monetary award of \$560.00 for March 2019 and \$1,750.00 for April 2019, the amounts requested by the landlord.

Although the landlord's application does not seek to retain the tenant's security and pet damage deposits (the deposits), using the offsetting provisions of section 72 of the *Act*, I

allow the landlord to retain the tenant's deposits plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

#### Analysis - Remainder of Tenant's Application

This tenancy is ending shortly and the tenant already has plans to remove all possessions from the rental unit on April 29, 2019, four days after this hearing. The tenant has not applied for any monetary award, and confirmed at the hearing that, given the date of this hearing, the issue of snow removal from the landlord's parking lot will no longer have any effect on the remaining portion of this tenancy. For these reasons, I dismiss the tenant's applications for orders requiring the landlord to comply with the *Act*, the *Regulation* or the tenancy agreement, and for an order requiring the landlord to provide services, facilities and services that the tenant anticipated receiving when this tenancy began.

#### Conclusion

I dismiss the tenant's application and I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 monetary Order in the landlord's favour under the following terms against Tenant PB, which allows the landlord to recover unpaid rent owing from this tenancy and the filing fee, and to retain the deposits:

Item	Amount
Unpaid Rent from March 2019	\$560.00
Unpaid Rent April 2019	1,750.00
Less Deposits (\$875.00 + \$875.00 = \$1,750.00)	-1,750.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$660.00</b>

The landlord is provided with these Orders in the above terms and Tenant PB must be served with this Order as soon as possible. Should Tenant PB fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 25, 2019

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Residential Tenancy Branch