



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, OPR, FFL

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession pursuant to section 46;
- A monetary order for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The agents JG and SG attended the hearing representing the landlord “(the landlord)”. The landlord was given an opportunity to present affirmed testimony, call witnesses and submit evidence.

The tenant did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled, plus an additional ten minutes, to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord testified the landlord sent the Notice of Hearing and Application for Dispute Resolution to the tenant by registered mail on March 14, 2019. The landlord provided the Canada Post tracking number referenced on the first page of this decision in support of service. Section 90 of the *Act* deems the tenant to have received the documents 5 days later, on March 19, 2019.

Pursuant to sections 89 and 90. I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on March 19, 2019.

*Amendment to increase monetary award requested*

The landlord requested an amendment to the landlord's application to increase the monetary order requested from \$2,625.00 to \$3,675.00 to include additional outstanding rent for the months of March and April 2019. The landlord's application, submitted in February 2019, pre-dated the due date for rent for March and April 2019 and as such the landlord's claim does not reflect outstanding rent for March and April 2019.

Section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended 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.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include outstanding rent for the months of March and April 2019. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to increase the landlord's overall claim by \$1,050.00 for unpaid rent for the months of March and April 2019. The total monetary order requested by the landlord is \$3,675.00 as well as \$100.00 reimbursement of the filing

*Amendment to authorize the landlord to retain the security deposit*

The landlord requested a second amendment to retain the security deposit of \$262.50 and apply the security deposit to the monetary order under section 72 of the *Act*. The landlord testified this application was inadvertently omitted.

I find the tenant could reasonably anticipate that the landlord's application would include an application to retain the security deposit and apply it to a monetary order for outstanding rent. I find the amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to include an application to apply the security deposit to a monetary award under section 72.

Issue(s) 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 pursuant to section 67 of the *Act*?  
Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?  
Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord provided uncontradicted affirmed testimony as the tenant did not appear at the hearing.

The parties entered into month to month tenancy agreement beginning April 27, 2018 for monthly rent of \$525.00 payable on the first of the month. The tenant paid a security deposit to the landlord at the beginning of the tenancy of \$262.50. The landlord holds the security deposit. The tenant has not provided written authorization to the landlord to apply the security deposit to outstanding rent.

The landlord submitted a copy of the tenancy agreement.

The landlord testified the tenant is currently in arrears of rent of \$3,675.00. The landlord submitted a copy of a ledger showing rent paid and owing.

The landlord testified a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") was posted to the tenant's door on February 2, 2019 thereby effecting service under section 90 of the *Act* on February 5, 2019.

The landlord submitted a copy of the Ten-Day Notice as evidence.

The Ten-Day Notice provides the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date of February 15, 2019.

The landlord testified the tenant did not pay rent after service of the Ten-Day Notice and did not make an application for dispute resolution. The landlord provided uncontradicted testimony the full amount claimed remains unpaid and owing to the landlord.

The landlord submitted a Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy indicating rent outstanding as stated above at the time the Ten-Day Notice was served.

The tenant continues to occupy the unit.

### Analysis

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenant was served with the Ten-Day Notice on February 5, 2019 in accordance with sections 88 and 90 of the *Act*.

I find the tenant did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice February 15, 2019 requiring the tenant to vacate the rental unit by that date.

As the tenant continues to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

I therefore grant the landlord an order of possession effective two days after service.

Based on the uncontradicted evidence of the landlord, I grant the landlord a monetary award pursuant to section 67 for outstanding rent in the amount of \$3,675.00.

Further to section 72, I award the landlord authority to apply the security deposit to the monetary award.

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee.

In summary, I grant the landlord a monetary order for **\$3,512.50** calculated as follows:

ITEM	AMOUNT
Award to landlord for outstanding rent	\$3,675.00
Reimbursement of filing fee	\$100.00
(Less security deposit)	(\$262.50)
<b>Monetary Order</b>	<b>\$3,512.50</b>

### Conclusion

I grant the landlord a monetary order in the amount of **\$3,512.50**. 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) to be enforced as an order of that Court.

I grant the landlord an order of possession **effective two (2) 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 to 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: April 30, 2019

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Residential Tenancy Branch