



# 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 was convened as a result of the Landlord's Application for Dispute Resolution, made on February 27, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- an order granting authorization to retain the security deposit;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that his agent served his Application and documentary evidence package to the Tenant in person on February 28, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant confirmed that she did not submit any documentary evidence in preparation for this hearing.

Both parties were given 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.



Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Sections 38 and 72 of the *Act*?
3. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on January 1, 2019. Rent in the amount of \$900.00 is due to be paid to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00, which the Landlord continues to hold. Neither party submitted a copy of the tenancy agreement.

The Landlord testified that the Tenant has failed to pay rent when due for February and March 2019. Currently, the outstanding balance of rent owing to the Landlord is \$1,800.00.

The Landlord testified that he subsequently served the Tenant with the 10 Day Notice for Unpaid Rent or Utilities dated February 2, 2019 (the "10 Day Notice"), with an effective date of February 12, 2019 by posting it on the Tenant's door on February 2, 2019. The Tenant confirmed received on February 4, 2019. The Landlord stated that the Tenant has not made any payments towards the outstanding rent and has not applied to cancel the 10 Day Notice. The Landlord submitted a copy of the 10 Day Notice in support.

The Tenant confirms that she has not paid rent in the amount of \$1,800.00. The Tenant testified that she felt entitled to not pay rent as there was an issue with the heat as well as hydro in the rental unit.

The Tenant testified that she moved out of the rental unit on March 28, 2019. The Landlord stated that he has not yet confirmed that the Tenant has in fact moved out of the rental unit. As such, the Landlord is still seeking an order of possession relating to unpaid rent.



The Landlord is seeking an order of possession as well as a monetary order in the amount of \$1,800.00 relating to the unpaid rent. The Landlord is wishing to apply the security deposit in the amount of \$400.00 to the outstanding money owed. If successful, the Landlord is also seeking the return of the filing fee.

### Analysis

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

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, 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.

I find that the Landlord served the 10 Day Notice dated February 2, 2019, with an effective vacancy date of February 12, 2019 by posting it on the Tenant's door on. The Tenant confirmed receipt on February 4, 2019. Pursuant to section 88 of the Act, I find the above document was sufficiently served for the purposes of the Act.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. After receiving the 10 Day Notice, the Tenant had until February 9, 2019 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept that the parties agreed that the Tenant did not pay any of the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice. I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, February 14, 2019 pursuant to section 46(5) of the Act.



I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I further find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$1,800.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

I find it appropriate in the circumstances to order that the Landlord retain the portion of the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$1,500.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$1,800.00
Filing fee:	\$100.00
<i>LESS security deposit:</i>	<i>(\$400.00)</i>
<b>TOTAL:</b>	<b>\$1,500.00</b>

### Conclusion

The Tenant has breached the tenancy agreement and the Act, by not paying rent to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,500.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).



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 11, 2019

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Residential Tenancy Branch