



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to obtain an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 21, 2019 ("10 Day Notice"), for a monetary order for unpaid rent or utilities, to retain the tenant's security deposit, and to recover the cost of the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by personal service at the rental unit address at approximately 9:30 a.m. on March 5, 2019, which was witnessed by the landlord's daughter, DP. Therefore, as there is no evidence before to prove to the contrary, I accept the landlord's undisputed testimony that the tenant was served on March 5, 2019, with the Notice of Hearing, application and documentary evidence. As the tenant did not attend the hearing, I find that this application is undisputed and unopposed by the tenant.

### Preliminary and Procedural Matters

Firstly, the landlord requested to increase their monetary claim from the original amount of \$3,800.00 to also include loss of rent for April 2019 of \$850.00 as the rental until

remains occupied by the tenant. The landlord was advised that loss of April 2019 rent of \$850.00 would be included as I find the tenant would not be prejudiced by such an amendment as the tenant would know or ought to have known that by continuing to occupy the rental unit into April 2019, that loss of rent would be suffered by the landlord. This amendment was also permitted pursuant to section 64(3) of the *Act*.

The landlord confirmed their email address at the outset of the hearing. The landlord also confirmed their understanding that the decision and any resulting orders would be emailed to the landlord and sent by regular mail to the tenant as an email address for the tenant was not included in the application or provided during the hearing.

#### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

#### Background and Evidence

The landlord stated that he has lost his copy of the tenancy agreement. The landlord stated a month to month tenancy began between August and October of 2015. The landlord affirmed that monthly rent has remained \$850.00 per month and has been due on the first day of each month since the start of the tenancy. The tenant continues to occupy the rental unit. According to the landlord, the tenant paid a security deposit of \$425.00 at the start of the tenancy, which the landlord continues to hold. The security deposit has accrued \$0.00 in interest since the start of the tenancy.

The landlord testified and submitted a Proof of Service document, which supports that the tenant was served with the 10 Day Notice by personal service on February 22, 2019. The 10 Day Notice included an effective vacancy date of March 3, 2019 and indicated that \$2,950.00 was owed as of February 21, 2019. According to the landlord, the tenant did not dispute the 10 Day Notice and did not pay any of the amount owed within five days of receiving the 10 Day Notice or on any date thereafter.

The landlord's testimony reflected the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid balance of previous rent up to February 21, 2019	\$2,950.00
2. Unpaid March 2019 rent	\$850.00
3. Loss of April 2019 rent	\$850.00
<b>TOTAL</b>	<b>\$4,650.00</b>

The landlord is seeking an order of possession, a monetary order and to offset the money owed with the tenant's security deposit of \$425.00.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice is listed as March 3, 2019. The effective date would automatically correct to March 4, 2019 pursuant to section 53 of the *Act* as I accept the landlord's testimony that the tenant was personally served with the 10 Day Notice on February 22, 2019. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which corrects to March 4, 2019. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended as of March 4, 2019.

**Claim for unpaid rent and loss of rent** –The landlord testified that the rental unit continues to be occupied and that no rent has been received as indicated above. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$4,650.00**, as described in the table above.

The landlord is holding the tenant's security deposit of \$425.00, which includes \$0.00 in interest. As the landlord has succeeded with their application, I grant the landlord the

recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

**Monetary Order** – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus interest as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid balance of previous rent up to February 21, 2019	\$2,950.00
2. Unpaid March 2019 rent	\$850.00
3. Loss of April 2019 rent	\$850.00
4. Filing fee	\$100.00
<b><i>Subtotal</i></b>	<b>\$4,750.00</b>
<i>Less tenant's security deposit plus interest</i>	<i>-( \$425.00)</i>
<b>TOTAL OWING BY TENANT TO LANDLORD</b>	<b>\$4,325.00</b>

Given the above, and pursuant to sections 67 and 72 of the *Act*, I authorize the landlord to retain the tenant's full security deposit including in interest of \$425.00 from the **\$4,750.00** amount owing to the landlord. Therefore, I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$4,325.00**.

### Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$4,750.00 as indicated above. The landlord has been authorized to retain the tenant's full security deposit including interest which totals \$425.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$4,325.00. This order must be served on the

tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision and the orders will be emailed to the landlord and the decision will be sent by regular mail to the tenant as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 15, 2019

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Residential Tenancy Branch