



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:16 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord entered into written evidence a witnessed Proof of Service document attesting to the landlord's posting of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on February 16, 2019. The landlord also gave sworn testimony to this effect, noting that the 10 Day Notice remains on the tenant's door. I find that the tenant was deemed served with this Notice in accordance with section 88 of the *Act* on February 19, 2019, the third day after its posting.

The landlord entered into written evidence and gave sworn testimony that they sent the tenant a copy of the dispute resolution hearing package and written evidence by registered mail on March 26, 2019. The landlord provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. I find that the tenant was deemed served with this package in accordance with sections 88, 89 and 90 of the *Act* on March 31, 2019, the fifth day after its mailing.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

On February 27, 2015, the parties signed a fixed term Residential Tenancy Agreement. The term of this tenancy was to run from April 1, 2015 until April 30, 2016. When the first term expired, the tenancy continued as a month-to-month tenancy. Monthly rent was initially set at \$800.00, payable in advance on the first of each month, plus hydro. The landlord entered into written evidence a copy of Notice of Rent Increase forms, which establishes that the current monthly rent is set at \$887.00. This monthly rent is scheduled to increase to \$909.00 on May 1, 2019. The landlord continues to hold the tenant's \$400.00 security deposit paid on February 27, 2015.

The landlord's application for a monetary award of \$2,711.00 included the following as set out on the Monetary Order Worksheet entered into written evidence by the landlord:

<b>Item</b>	<b>Amount</b>
Unpaid February 2019 Rent	\$887.00
Unpaid March 2019 Rent	887.00
NSF charge for February 2019	25.00
NSF charge for March 2019	25.00
Anticipated Loss of Rent April 2019	887.00
<b>Total Monetary Order Requested</b>	<b>\$2,711.00</b>

The landlord also applied for the recovery of the \$100.00 filing fee for this application.

The landlord gave undisputed sworn testimony supported by written evidence to support the claim for the above-noted amounts. The landlord testified that the tenant has not paid anything to the landlord since the landlord posted the 10 Day Notice on their door. The landlord said that the tenant does not appear to have returned to the rental unit since February. A neighbour of the tenant's advised the landlord that the tenant had told them that they were going on vacation for three or four months. The landlord does not have any way of contacting the tenant.

### Analysis

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 (4) (b) of the *Act* provides that upon receipt of a 10 Day Notice to end tenancy the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the five days of service granted under section 46 (4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 46 (5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, that being March 1, 2019. 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, 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.

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.

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. 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.”

As there is undisputed sworn testimony that the tenant's postdated cheques have been returned as having non sufficient funds in the tenant's account, I find that the landlord is entitled to a monetary award of \$2,711.00 for unpaid rent and NSF cheque fees owing for the months of February, March and April 2019.

As the landlord has been successful in this application, I allow the landlord to recover their \$100.00 filing fee from the tenant.

I also allow the landlord to implement this monetary award by ordering the landlord to retain the tenant's security deposit to partially offset the amount owing.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 under the following terms, which allows the landlord to recover unpaid rent, NSF fees and the filing fee for this application, and to retain the security deposit for this tenancy:

<b>Item</b>	<b>Amount</b>
Unpaid February 2019 Rent	\$887.00
Unpaid March 2019 Rent	887.00
NSF charge for February 2019	25.00
NSF charge for March 2019	25.00
Unpaid Rent for April 2019	887.00
Less Security Deposit	-400.00
Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$2,411.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 29, 2019

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Residential Tenancy Branch