



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OPR MNR MNDC MNSD FF

### 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, damage and/or loss 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony, to present evidence and to make submissions. The tenants confirmed service of the landlord's application for dispute resolution, including the notice of hearing and evidence on file.

At the outset of the hearing the tenant advised that she had filed her own application which was scheduled to be heard on June 17, 2019 and requested the matter be heard simultaneously with this application. The tenant's request was declined.

### Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent up until the date of the hearing. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the

tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

### Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent and loss?

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

The tenancy began on September 1, 2017 and the current monthly rent is \$1450.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$725.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on February 26, 2019 the tenant was served with the 10 Day Notice in person.

The landlord testified that the tenant did not pay the outstanding rent amount as indicated in the 10 Day Notice within five days of service of the Notice.

The tenants acknowledged receipt of the 10 Day Notice on February 26, 2019. The tenants acknowledged that at least \$725.00 of the rent for February 2019 was still outstanding and that they did not pay this amount within five days of receiving the Notice.

There was an initial dispute as to the amount of rent outstanding to the date of the hearing; however, the parties reached a settlement on this portion of the dispute and agreed that an amount of \$3625.00 is outstanding as of May 7, 2019.

### Analysis

I am satisfied that the tenants were served with the 10 Day Notice on February 26, 2019.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

I find that the 10 Day Notice complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires 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.

I find that the tenants were obligated to pay monthly rent in the amount of \$1450.00 but has accrued rent arrears in the agreed upon amount of \$3625.00 up until May 7, 2019. The tenants did not have a right under the Act to deduct or withhold this amount. I accept the landlord's claim for outstanding rent of \$3625.00.

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 for a total monetary award of \$3725.00.

The landlord continues to hold a security deposit of \$725.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$3000.00.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3000.00. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: May 07, 2019

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Residential Tenancy Branch