



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1077036 BC LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNR FFT MT FFL MNRL-S OPR

### **Introduction**

This hearing dealt with applications from both the landlord and tenants pursuant to the Residential Tenancy Act.

The landlord applied for:

- An order of possession for unpaid rent pursuant to section 55;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- More time to file their application pursuant to section 66;
- Cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the “landlord”).

At the outset of the hearing the parties confirmed that the tenant has vacated the rental unit and an Order of Possession is no longer being sought. The tenant withdrew their whole application. The landlord withdrew the portion of their application seeking an Order of Possession.

As both parties were present service was confirmed. The landlord testified that they served their application and materials by registered mail on July 25, 2019. The tenant

initially expressed confusion about the contents of the hearing package but confirmed that they had been served with the landlord's materials. Based on the testimonies I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Award as claimed?  
Is the landlord entitled to recover their filing fee from the tenant?

### Background and Evidence

The parties agreed on the following facts. The monthly rent for this tenancy is \$1,150.00 payable on the first of each month. The tenant failed to pay rent for the months of July and August, 2019.

The tenant submits that they paid a total of \$875.00 for security and pet damage deposit for this tenancy. The landlord submits that the actual amount is \$850.00 comprised of a \$575.00 security deposit and \$275.00 pet damage deposit.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on July 3, 2019 indicating a rental arrear of \$1,150.00. The tenant submits that they vacated the rental unit sometime in the month of July, 2019. The tenant testified that they left their personal possessions and furniture in the rental unit when vacating.

The landlord seeks a monetary award in the amount of \$2,300.00, the equivalent of the rent for July and August, 2019. They submit that there was no written notice provided by the tenant of their intention to vacate and they only confirmed that the suite has been abandoned sometime in August, 2019.

### Analysis

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.

I accept the evidence of the parties that monthly rent for this tenancy was \$1,150.00 and that the tenant failed to pay any rent for July or August, 2019. While the tenant submits that they vacated the rental unit in July and therefore should not be held accountable for the August rent, I find that there is insufficient evidence that the tenant provided written notice nor that there was an agreement between the parties. I do not find the tenant's testimony that there was an agreement to be credible, believable or supported in any of the surrounding evidence.

Based on the evidence of the landlord, including photographs of the suite littered with the tenant's personal items, and the fact that the tenant had filed an application to dispute the 10 Day Notice, I find that the landlord came to a reasonable conclusion that the tenant continued to occupy the rental unit.

I accept the evidence that the landlord discovered the rental unit abandoned sometime in August 2019, upon which they took reasonable measures to mitigate their rental losses by cleaning the unit and preparing it for occupation by another tenant.

I find that the landlord has provided sufficient evidence to establish that they have incurred monetary losses in the amount of \$2,300.00 as a result of the tenant's failure to pay rent when it was due. As such I issue a monetary award in that amount in the landlord's favour.

I find the landlord's evidence regarding the amount of the deposit paid for this tenancy to be more credible than that of the tenant. The landlord was able to provide details of the payment and what each amount is attributed towards. I accept the evidence that the total deposits paid for this tenancy is \$850.00.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was successful the landlord may recover their filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,550.00 allowing the landlord to recover the rental arrears and filing fee and retain the deposits for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant 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: September 12, 2019

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Residential Tenancy Branch