



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, MNRL, FFL

### Introduction

This hearing dealt with two applications by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

JA attended as agent for the landlord ("the landlord"). The landlord had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 19 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

*Service*

The landlord provided affirmed testimony that they personally served the tenant with the Notice of Hearing and Application for Dispute Resolution on August 19, 2022. Further to the testimony of the landlord, I find the landlord complied with the service provisions of section 89 of the Act.

*Withdrawal of Application for Order of Possession*

The landlord withdrew the application for an Order of Possession as the Order was previously granted on February 10, 2022 under a file number appearing on the first page.

The application for an Order of Possession is accordingly dismissed without leave to reapply.

As both applications request the same award, the landlord proceeded with the earlier application filed February 18, 2022. The landlord withdrew the second application filed March 28, 2022 which is dismissed without leave to reapply.

*Request for Amendment*

The landlord requested an amendment to the landlord's application to request that the landlord be authorized to apply the security deposit and pet deposit in the total amount of \$550.00 held by the landlord to any monetary award granted pursuant to section 72.

The landlord testified the tenant paid the landlord a security deposit of \$450.00 and a pet deposit of \$100.00 at the start of the tenancy which the landlord holds. The tenant has not given the landlord permission to apply the security deposit to outstanding rent.

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include a request authorizing the landlord to apply the deposits to a monetary award for outstanding rent. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to allow the landlord to request that the deposits of \$550.00 be applied to any monetary award.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for outstanding rent, reimbursement of the filing fee and authorization to apply the deposits to the award?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord provided uncontradicted testimony as the tenant did not attend the hearing. A copy of the tenancy agreement was submitted. The landlord submitted a comprehensive, extensive evidence package. They testified to the background of the tenancy and the present circumstances.

The landlord testified the tenancy started in September of 2016. Rent is \$950.00 per month due on the first day of each month. The tenant paid a security deposit of \$450.00 and a pet damage deposit of \$100.00 at the beginning of the tenancy for a total of \$550.00. The agreement provides the landlord pays for utilities and the tenant reimburses the landlord.

The landlord stated an Order of Possession pursuant to an application referenced on the first page was granted on February 10, 2022. The tenant has continued to occupy the unit while the landlord is taking steps to have the tenant removed.

The tenant has paid some rent which is accepted for use and occupancy only. A balance is owing of \$8,623.00 for rent and utilities. The landlord submitted a comprehensive breakdown of the amount owing recording all payments received and amounts owing.

The landlord requested an award of **\$8,173.00 comprising** \$8,623.00 for outstanding rent and utilities as well as reimbursement of the filing fee of \$100.00 and authorization to apply the deposits of \$550.00 to the award as follows:

ITEM	AMOUNT
Outstanding	\$8,623.00
Filing fee	\$100.00
(Less deposits)	(\$550.00)
<b>TOTAL MONETARY ORDER REQUESTED</b>	<b>\$8,173.00</b>

### Analysis

I accept the landlord's uncontradicted testimony and documentary evidence in its entirety. I find the landlord has met the burden of proof with respect to the claim.

I find as follows. The tenant did not pay the landlord the amount required under the agreement for rent and utilities in full and a balance of \$8,623.00 remains owing. I find the outstanding amount is as claimed by the landlord and supported by documentary evidence..

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee.

I direct the landlord is authorized to apply the deposits to the award of \$550.00.

My award of **\$8,173.00** is summarized as follows:

ITEM	AMOUNT
Outstanding	\$8,623.00
Filing fee	\$100.00
(Less deposits)	(\$550.00)
<b>TOTAL MONETARY ORDER</b>	<b>\$8,173.00</b>

Therefore, I grant the landlord a Monetary Order pursuant to section 67 for outstanding rent as requested of **\$8,173.00**.

Conclusion

I grant the landlord a Monetary Order for **\$8,173.00**.

The Order must be served on the tenant. If the tenant fails to comply, the landlord may file the Order with the Courts of British Columbia to be 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 01, 2022

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Residential Tenancy Branch