



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF, CNR

### Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant seeks:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46.

The landlord seeks:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses.

As both parties attended, I confirmed that there were no issues with service of either the 10 Day Notice or the respective applications for dispute resolution.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. In the application, the landlord is seeking a monetary claim of \$3,290.92 which includes enforcement of a monetary order issued by another arbitrator on November 29, 2016 for \$1,756.92 (the “November Monetary Order”), rent arrear and filing fees. The landlord indicated that since the application was filed, some money has been received and they wish to reduce the monetary claim to \$2,712.92. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlords’ Application to decrease the landlord’s monetary claim from \$3,290.92 to \$2,712.92.

### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent as claimed? 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

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

This tenancy has been the subject of numerous earlier applications and hearings. There was a previous decision of this matter rendered on November 29, 2016 under the file number identified on the first page of this decision where another arbitrator issued a monetary order in the landlord's favour for \$1,756.92. The other arbitrator also reinstated the full monthly rent for this tenancy of \$956.00 a month effective September 8, 2016 from a reduced rent ordered at an earlier hearing.

The tenant applied for a review consideration of the decision of November 29, 2016. The decision of November 29, 2016 was reviewed by another arbitrator who dismissed the tenant's application and upheld the decision.

The two representatives of the landlord testified to the following facts. This month to month tenancy began on June, 2014 and the monthly rent is \$956.00 payable on the 1<sup>st</sup> of the month. A security deposit of \$460.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. For a time the rent was reduced to \$478.00 monthly by an order from this Branch issued on August 17, 2016. The decision of November 29, 2016 reinstated the full amount of rent of \$956.00 per month. The landlord testified that the tenant has only paid half the monthly rent for December and January. The landlord testified that the total rent owing for December and January is \$956.00.

The tenant testified that the tenant is on social assistance and her monthly rent has been paid by a combination of provincial Social Assistance another private agency. The tenant argued, through her interpreter and her counsel, that the November Monetary Order does not take into consideration payments that have been made by the two

organizations and should be reduced. The tenant also argued that the decision of November 29, 2016 should be reconsidered as the underlying issue of rodent infestation has not been resolved. The tenant said that rent payments are issued by the two organizations and she had not directed them to reinstate payment of the full rental amount as she understood that amount was not owed as the matter remained under review consideration.

### Analysis

I find that I have no jurisdiction to hear evidence regarding the landlord's application to include arrears that have not been paid by the tenant towards the November Monetary Order in the landlord's current applicaiton. The matter has been considered by at least two other arbitrators and a conclusive order was issued, reviewed and upheld in November, 2016. I find I do not have the jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the Act. For that reason, I decline to include the November Monetary Order in the landlord's present claim as that matter is the subject of a final and binding decision by another arbitrator. If the November Monetary Order has been served and the tenant has not complied with that Order the Order may be filed with the courts. I cannot reconsider an order that has been issued and therefore reduce the landlord's claim by \$1,756.92, the amount of the November Monetary order.

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on December 2, 2016, and applied within five days of receipt on December 6, 2016. Accordingly, the tenant complied with the five day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord gave undisputed sworn testimony that only half of the rent amount of \$956.00 was paid for the months of December and January.

I find that the tenant was obligated to pay the monthly rent in the full amount of \$956.00. I accept the evidence before me that the tenant failed to pay the full rent due. Accordingly, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's evidence that the total amount of arrears for this tenancy is \$956.00. I issue a monetary award for \$956.00 which includes the rent arrears for

December and January as at January 10, 2016, the date of the hearing, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$460.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises 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 in the landlord's favour in the amount of \$596.00 under the following terms, which allows the landlord to recover unpaid rent for the months of December, and January, and the filing fee for their application:

Item	Amount
Unpaid Rent December	\$478.00
Unpaid Rent January	\$478.00
Filing Fees	\$100.00
Less Security Deposit	-\$460.00
<b>Total Monetary Order</b>	<b>\$596.00</b>

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: January 16, 2017

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Residential Tenancy Branch