



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding AFFORDABLE HOUSING CHARITABLE ASSOCIATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, OPR, MNSD, FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent;
- an order to keep all or part of the security deposit; and
- recovery of the filing fee paid for this application from the tenant.

The tenant did not appear. The landlord's agent ("landlord") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

The landlord testified that she sent the tenant a copy of the Notice of Hearing by registered mail. The landlord testified that she sent the registered mailing to the rental unit on January 25, 2017. The landlord provided the Canada Post Tracking Number. Taking into account that the online registered mail tracking information supports the undisputed testimony of the landlord and in accordance with sections 89 and 90 of the Act, I find that the tenant has been deemed served with the Notice of Hearing as of January 30, 2017, the fifth day after the registered mailing.

### Issue(s) to be Decided

- Is the landlord entitled to an order for possession for unpaid rent?

- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to a monetary order to keep all or part of the security deposit?
- Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The undisputed testimony of the landlord established that the tenant entered into a five month fixed term tenancy starting September 1, 2012 and ending January 31, 2013, with the option to continue the tenancy on a month to month basis. Rent in the amount of \$1,500 is due on the first day of each month. The landlord received a security deposit in the amount of \$450.00 on or about August 15, 2012, the date when the tenant signed the tenancy agreement.

The landlord testified that the tenant's rent has been subsidized by the government so that the tenant's portion of the rent due each month is \$554.00. The landlord testified, however, that the tenant's subsidy for the month of February 2017 was not granted. As a result, the landlord testified that the tenant is responsible for the entire rent in the amount of \$1,500 for the month of February 2017.

The landlord testified that the tenant did not pay her portion of the rent in the amount of \$554.00 due for the month of January 2017. The landlord testified that the tenant paid the rent for the month of January 2017 by cheque. The landlord testified that the tenant's rent cheque was subsequently returned due to insufficient funds. The landlord is seeking an administrative fee of \$25.00 from the tenant. The landlord indicated that the tenancy agreement allows for the \$25.00 administrative fee for cheques that are returned due to insufficient funds.

The landlord testified that on January 9, 2017 she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), with an effective date of January 19, 2017, by posting it on the door of the tenant's rental unit.

The landlord testified that the tenant made a \$300.00 payment towards the rent arrears on January 16, 2017. After the expiration of the 10 Day period the landlord applied for an order of possession and a monetary order for unpaid rent.

The landlord testified that the tenant still owes \$254.00 for unpaid rent due for the month of January 2017. The landlord also testified that the tenant has not paid rent in

the amount of \$1,500 for the month of February 2017. The landlord is seeking a total monetary amount of \$1,779.00 for unpaid rent.

The landlord is also seeking an order of possession for unpaid rent.

The landlord is requesting to apply the tenant's security deposit in the amount of \$450.00 against the amounts owed by the tenant.

The landlord is also seeking recovery of the \$100.00 filing fee for their application from the tenant.

### Analysis

Based upon the undisputed evidence of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the dispute resolution hearing package and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

I find that the tenant was required to pay rent in the amount of \$554.00 due on the 1<sup>st</sup> day of January 2017 and that rent in the amount of \$254.00 remains unpaid. I also find that the tenant was required to pay rent in the amount of \$1,500.00 due on the 1<sup>st</sup> day of February 2017 which the tenant has failed to pay.

I find that the landlord is entitled to the \$25.00 administrative fee for the tenant's cheque that was returned due to insufficient funds as the fee is permitted pursuant to the written tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on January 12, 2017, three days after its posting on the door of the rental unit.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within five (5) days granted under section 46(4) of the *Act* and that they did not dispute the 10 Day Notice within that 5 day period.

Section 46(1) of the *Act* stipulates that a 10 Day Notice is effective 10 days after the date that the tenant receives the Notice.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. As the tenant is deemed to have received this Notice on January 12, 2017, I find that the earliest effective date of the 10 Day Notice is January 22, 2017.

In the absence of evidence to the contrary, I find that the tenant was served with a 10 Day Notice that required the tenant to vacate the rental unit on January 22, 2017, pursuant to section 46 of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, January 22, 2017. Accordingly, I find that the landlord is entitled to an order of possession.

The landlord is requesting to apply the tenant's security deposit in the amount of \$450.00 against the amounts owed by the tenant, which I allow.

As the landlord's application is successful, I find that the landlord is entitled to the \$100.00 filing fee from the tenant.

Based on the foregoing, I find that the landlord is entitled to a monetary order in the total amount of \$1,429.00 as follows:

January 2017 Unpaid Rent	\$ 254.00
February 2017 Unpaid Rent	\$ 1,500.00
Administrative NSF Fee	\$ 25.00
Filing Fee	\$ 100.00
<b>Subtotal</b>	<b>\$ 1,879.00</b>
Less Security Deposit	\$ 450.00
<b>Total Monetary Award</b>	<b>\$ 1,429.00</b>

### Conclusion

Pursuant to section 55 of the *Act*, 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.

The landlord is granted a monetary Order in the amount of \$1,429.00 which is for unpaid rent, the administrative fee and the filing fee, less the security deposit. This Order must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 16, 2017

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Residential Tenancy Branch