



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. 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"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail January 28, 2017. The agent provided a registered mail tracking number in evidence which has been included on the cover page of this decision for ease of reference. The agent testified that the registered mail package was marked as "unclaimed" and was returned to sender which was supported by the online registered mail tracking website. Pursuant to section 90 of the *Act*, documents served by registered mail are deemed served five days after they are mailed. Therefore, I find the tenant was deemed served with the Notice of Hearing, Application and documentary evidence on February 2, 2017, which is five days after the registered mail package was mailed.

### Preliminary and Procedural Matter

During the hearing, the agent requested to include the loss of February 2017 rent of \$1,250.00 to the original claimed monetary amount of \$5,000.00 as the tenant continues to occupy the rental unit. The amendment was permitted pursuant to section 64(3(c) of the *Act* as I find that it is reasonable for the tenant would know or ought to know that

rent is payable on the day it is due in accordance with the tenancy agreement. As a result, the landlord's total monetary claim was increased from \$5,000.00 to \$6,250.00.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

### Background and Evidence

The agent stated that while a copy of the tenancy agreement was not submitted in evidence, a written tenancy agreement exists between the parties. The agent testified that a fixed term tenancy began on May 1, 2016 and reverted to a month to month tenancy after April 30, 2017. Monthly rent in the amount of \$1,250.00 is due on the first day of each month. The tenant paid a security deposit of \$625.00 at the start of the tenancy which the landlord continues to hold.

The agent confirmed service of the 10 Day Notice for Unpaid Rent or Utilities dated December 18, 2016 (the "10 Day Notice") by posting to the tenant's door on December 18, 2016. The 10 Day Notice included an effective vacancy date of December 28, 2016 and indicated that \$3,750.00 was owed as of December 1, 2016. The tenant did not dispute the 10 Day Notice and did not pay the amount indicated as owing within five days of receiving the 10 Day Notice. The agent testified that the landlord has suffered a loss due to the tenant as follows:

1. Tenant failed to pay October 2016 rent of \$1,250.00
2. Tenant failed to pay November 2016 rent of \$1,250.00
3. Tenant failed to pay December 2016 rent of \$1,250.00
4. Loss of rent of January 2017 of \$1,250.00
5. Loss of rent of February 2017 of \$1,250.00

The landlord submitted the 10 Day Notice in evidence.

### Analysis

Based on the undisputed documentary evidence and undisputed oral testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** - I find that the tenant failed to pay the rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the Notice is listed as December 28, 2016. I find the tenant was conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was December 28, 2016. The tenant continues to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

**Claim for unpaid rent and loss of rent** – As the tenant was deemed served and did not attend the hearing, I find the Application of the landlord to be unopposed by the tenant. The agent testified that \$6,250.00 in rent arrears and loss of rent is owed by the tenant as of the date of the hearing. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$6,250.00** as claimed.

The landlord is holding a security deposit of \$625.00 which was paid by the tenant at the start of the tenancy and has accrued no interest since the start of the tenancy.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**.

**Monetary Order** – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus \$0.00 interest as follows:

ITEM DESCRIPTION	AMOUNT
1. Unpaid October 2016 rent	\$1,250.00
2. Unpaid November 2016 rent	\$1,250.00
3. Unpaid December 2016 rent	\$1,250.00
4. Loss of January 2017 rent	\$1,250.00
5. Loss of February 2017 rent	\$1,250.00
6. Filing fee	\$100.00
<b>Subtotal</b>	<b>\$6,350.00</b>
<i>(Less tenant's security deposit of \$625.00 including \$0.00 interest)</i>	<i>-\$625.00</i>
<b>TOTAL BALANCE OWING BY TENANT TO LANDLORD</b>	<b>\$5,725.00</b>

### Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$6,350.00 as indicated above. The landlord is authorized to retain the tenant's full security deposit of \$625.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$5,725.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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 24, 2017

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Residential Tenancy Branch