



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SEAMONT INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was adjourned to a participatory hearing. The Landlord filed under the Residential Tenancy Act (the “Act”), for a Monetary Order for unpaid rent and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”) who provided affirmed testimony. The Tenant did not attend. The agent for the Landlord (the “Agent”) was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure state that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Agent provided affirmed and undisputed testimony in the hearing that a package containing the Application for Dispute Resolution by Direct Request, the Notice of Direct Request, and all supporting documentation (the “Package”) was served on the Tenant in-person and by registered mail. The Agent provided in the documentary evidence before me a Proof of Service Notice of Direct Request Proceeding signed by the Tenant on July 20, 2017. The Agent also provided the registered mail receipt and tracking information into the documentary evidence before me indicating that the Package was sent to the Tenant at the rental address on July 20, 2017. Although the tracking information indicates that the registered mail package was not picked-up by the Tenant, I find that the Landlord still served the Tenant in accordance with the Act by serving it in-person and by sending it by registered mail to the Tenant’s address.

The Agent also testified that the Notice of Hearing was sent to the Tenant by registered mail on August 1, 2017, and provided in the documentary evidence before me the

registered mail receipt. As a result, I find that the Tenant has been duly served in accordance with sections 88 and 90 of the *Act*.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, I refer only to the relevant facts and issues in this decision.

### Preliminary matters

In the hearing the Landlord requested to amend their application to include recovery of the filing fee and retention of the security deposit. The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state under section 4.2, that the Application may be amended at the hearing to include additional monetary claims in circumstances that can reasonably be anticipated. As a result, I have amended the application to include recovery of the filing fee and retention of the Security Deposit.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for non- payment of rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to monetary compensation to recover the filing fee pursuant to section 72 of the *Act*?

Is the landlord entitled to keep all or a portion of the Security Deposit or Pet Deposit to offset any monetary compensation owed to the Landlord by the Tenant pursuant to section 72 of the *Act*?

### Background and Evidence

The Landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) in the amount of \$1,765.00, dated July 5, 2017. The 10 Day Notice has an effective vacancy date of July 18, 2017, and indicates that it was served on the Tenant on July 5, 2017, by attaching a copy to the door of the Tenant's rental unit.

The Landlord submitted a Proof of Service of the 10 Day Notice (the "Proof of Service") signed by the local representative of the Landlord (the "Representative") which did not

include witness information or a witness signature. In the hearing the Agent provided affirmed and undisputed testimony that the 10 Day Notice was served in the manner described above.

In the hearing the Agent testified that the tenancy began as a month-to-month tenancy on November 1, 2016, and that rent was due on the first of each month in the amount of \$795.00. The Agent also submitted a copy of the tenancy agreement into the evidence before me confirming the conditions of the tenancy as noted above, as well as the payment of a Security Deposit in the amount of \$397.50 on October 24, 2016.

The Agent provided affirmed and undisputed testimony that the Tenant has not paid any rent for June and July of 2017, and only partial rent for May, 2017, in the amount of \$620.00. The Agent provided a monthly breakdown in the documentary evidence before me showing the outstanding rent owed for May, 2017 – July, 2017. The Agent also testified that the Tenant has not been seen on the premises in several weeks and they believe that the Tenant may have abandoned the property. However, the Agent testified that they are still seeking an Order of Possession which could be enforced in the event that the Tenant has not abandoned the rental unit.

### Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

**46** (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have heard affirmed testimony, and reviewed all relevant documentary evidence which was served in accordance with sections 88 and 90 of the Act, and I find that the Tenant was served with the 10 Day Notice on July 8, 2017, three days after it was attached to the door of the Tenant's rental unit.

I also find that the Tenant was obligated to pay the monthly rent of \$795.00, on time and in full each month. Based on the tenancy agreement, the Agent's affirmed and undisputed oral testimony, and the documentary evidence before me, I find that the Tenant owes \$1,765.00 in outstanding rent for the following periods:

- \$795.00 - \$620.00 = \$175.00 for May, 2017;
- \$795.00 for June, 2017; and
- \$795.00 for July, 2017.

As there is no evidence before me to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that 5 day period.

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 effective date of the 10 Day Notice, July 18, 2017.

I also find that the Landlord is entitled to recover the \$100 filing fee pursuant to section 72 of the *Act*.

As a result, I find that the Landlord is entitled to an Order of Possession and monetary compensation in the amount of \$1,865.00. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit in the amount of \$397.50 to offset the monetary compensation owed. I also find that the Landlord is entitled to a

Monetary Order in the amount of \$1,489.00, for the balance owed to the Landlord from the Tenant after the deduction of the security deposit.

### 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. The Landlord is provided with this Order in the above terms and 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 and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord monetary compensation in the amount of \$1,865.00 for \$1,765.00 in unpaid rent and recovery of the \$100.00 filing fee. Pursuant to section 72, I authorize the Landlord to retain the security deposit in the amount of \$397.50 to offset this amount.

Pursuant to section 67 of the *Act*, I also grant the Landlord a Monetary Order in the amount of \$1,489.50; the balance of the monetary compensation owed to the Landlord by the Tenant after the deduction of the security deposit. The Landlord is provided with this Order in the above terms and 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: August 24, 2017

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Residential Tenancy Branch