



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR, MNR, MNSD, MND, MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) filed April 26, 2017 and as amended July 31, 2017 for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the deposit(s) of the tenant - Section 38
4. An Order to recover the filing fee for this application - Section 72
5. A Monetary Order for damage to the unit – Section 67
6. A Monetary Order for loss or other money owed – Section 67

The landlord and their legal counsel attended the hearing. I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 1 and 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord submitted proof of mail registration sent May 12, 2017 inclusive of mail tracking particulars. The landlord further submitted proof of mail registration and tracking particulars in respect to their amendment sent to the tenant August 01, 2017. The landlord testified they sent to the tenant all of the relevant evidence upon which they wish to rely, as also submitted to this proceeding. Pursuant to Section 90 of the Act I am satisfied the tenant deemed served with the landlord's Notice of Hearing package and subsequent amendment on the fifth day after they were mailed.

The landlord clarified they are not seek retention of a tenant deposit.

The landlord was given full opportunity to be heard, to present relevant evidence and to make submissions.

### **Issue(s) to be Decided**

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed evidence is as follows. The tenancy began April 01, 2012. According to the landlord their best knowledge is that the tenant still resides in the rental unit. The agreed rent in the amount of \$1800.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord did not collect a security deposit from the tenant. The tenant failed to pay rent in the months of November 2015 through to February 2017, and on February 09, 2017 the landlord served the tenant with a notice to end tenancy for non-payment of rent stating the tenant owed unpaid rent in the amount of \$24,600.00. The landlord provided they served the requisite approved 10 Day Notice to End tenancy form, and an ancillary letter respecting same by attaching both to the tenant's front door of the dispute address, as well as the same under the tenant's door and the same in the tenant's mailbox. Pursuant to the aforementioned the landlord provided a proof of service document (Affidavit of Service sworn before a Commissioner for taking affidavits for British Columbia) by the landlord's process server, AB, attesting to the delivery/ service of the documents. The landlord's counsel testified that the tenant further failed to pay rent in the months of March through to July 2017.

The landlord also applied in respect to damage to the unit and other money owed the landlord. The landlord provided a series of photo images claiming to be damage to the unit, however did not provide any accounting or proof of loss related to the claimed damage or other money owed the landlord and did not provide same to the tenant. As a result, the landlord was apprised this portion of their claim would be dismissed with leave to reapply.

As a result of all the above the quantum sum of the landlord's monetary claim for all unpaid rent to July 2017.

### **Analysis**

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

I find that the landlord has not provided sufficient evidence of a claim for damage to the unit to support the requirements of **Section 7** of the Act and the landlord did not provide this hearing or the tenant with any financial claim in support of a remedy for damages. The landlord was apprised it remains available to them to seek compensation for damage to the unit for a period of 2 years from the end of the tenancy. The landlord's claim for compensation for damage to the unit is **dismissed** with leave to reapply.

Based on the landlord's undisputed evidence I find that the tenant was served with a Notice to End Tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice and is

therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

I also find that the landlord has established a monetary claim for unpaid rent. The landlord is also entitled to recovery of the \$100.00 filing fee. Calculation for a **Monetary Order** is as follows,

Unpaid rent / arrears: November 2015 to July 31, 2017	\$33,600.00
Filing Fee for the cost of this application	100.00
<b>Total Monetary Award to landlord</b>	<b>\$33,700.00</b>

### **Conclusion**

The landlord's application in its relevant part is granted.

**I grant an Order of Possession** to the landlord **effective 2 days from the day it is served on the tenant**. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

**I grant** the landlord a **Monetary Order** under Section 67 of the Act for the amount of **\$33,700.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding.**

*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: October 17, 2017

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Residential Tenancy Branch