



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OPR MNR MNDC MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent and utilities 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant confirmed service of the application for dispute resolution, including the notice of hearing and evidence on file.

The landlord advised they are withdrawing the monetary portion of the application for unpaid rent as the tenant has since paid all outstanding rent in full. The landlord was still seeking an order of possession.

### Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

### Background and Evidence

As per the tenancy agreement on file, this tenancy began on October 1, 2000. The tenant testified that he has actually been residing in this rental unit for over 21 years. The current monthly rent is \$1147.07 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on August 2, 2017 the tenant was served with the 10 Day Notice by posting a copy to the door of the rental premises.

The landlord testified that the tenant did not pay the outstanding rent amount of \$747.07 as indicated in the 10 Day Notice within five days of service of the Notice. The landlord testified the tenant made a rent payment of only \$400.00 on August 2, 2017 and subsequently made an additional payment of \$700.00 on August 14, 2017. The landlord submitted a statement of account transaction dates in support of the timing of the payments.

The tenant acknowledged service of the 10 Day Notice and that he did not pay the full amount of the rent arrears indicated, within five days, of receiving the Notice. The tenant stated he had been laid off from his job in this particular month which is why the rent was late. The tenant further argued that he has been a long term tenant and in other months the landlord does not pick up the cheque from the mailbox in time and still charges late fees.

### Analysis

I am satisfied that the tenant was deemed served with the 10 Day Notice on August 5, 2017, three days after its posting, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Notice issued on August 2, 2017 complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold a security deposit of \$400.00. I allow the landlord to retain \$100.00 from the security deposit in full satisfaction of the monetary award pursuant to section 38 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 01, 2017

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Residential Tenancy Branch