



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding THEPORTER RESIDENCES DEVELOPMENT LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes OPRM-DR, FFL

#### 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 pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:12 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave undisputed sworn testimony supported by written evidence that he handed the tenant the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on October 5, 2017. I find that the 10 Day Notice was served to the tenant on that day in accordance with section 88 of the *Act*.

The landlord gave undisputed sworn testimony that he sent a Notice of Direct Request Proceedings including the landlord's written evidence to the tenant by registered mail on October 26, 2017. After receiving an Interim Decision of November 10, 2017, regarding the original application for dispute resolution through the Residential Tenancy Branch's direct request process, the landlord gave sworn testimony that he handed the Interim Decision as well as the dispute resolution hearing package for this hearing to the tenant on November 14, 2017. I am satisfied that the landlord's dispute resolution hearing package and written evidence have been served to the tenant in accordance with sections 88 and 89 of the *Act*.

At the hearing, the landlord gave undisputed sworn testimony that the tenant has not paid any rent for November or December 2017, in addition to the original unpaid rent for October 2017, cited in the landlord's original application and 10 Day Notice. The landlord asked for permission to amend the amount of unpaid rent claimed in this application to include unpaid rent for November and December 2017. As the tenant was clearly aware that rent had not been paid for the additional two months which became owing on the second day of each of those months, I have allowed the landlord's request to amend the application to include unpaid rent for November and December 2017.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy began with a different landlord on January 8, 2015. Monthly rent was originally set at \$450.00, payable in advance on the first of each month. A \$250.00 security deposit was paid at the beginning of this tenancy. The current monthly rent is \$466.65, the amount identified in the landlord's 10 Day Notice. Ownership of this rental property transferred to the current landlord approximately one year ago.

The landlord gave undisputed sworn testimony that the tenant has failed to pay anything towards the rent for October, November and December 2017.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

In this case, there is undisputed sworn testimony that the tenant has failed to pay any rent for October, November and December 2017. Under these circumstances, I find that there is undisputed evidence that the landlord is entitled to a monetary award of \$466.65 for each of these three months.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

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.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee for this application, and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid October 2017 Rent	\$466.65
Unpaid November 2017 Rent	466.65
Unpaid December 2017 Rent	466.65
Less Security Deposit	-250.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1,249.95</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: December 07, 2017

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Residential Tenancy Branch