



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1537 Burnaby Street Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR

### Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"), initially made by way of an *ex parte* direct request proceeding on October 11, 2018, and which was adjourned on October 18, 2018 to a dispute resolution hearing.

The landlord seeks an order of possession of the rental unit for unpaid rent, pursuant to section 55 of the Act, and a monetary order for unpaid rent and the filing fee, pursuant to sections 67 and 72(1) of the Act.

A dispute resolution hearing was convened on November 20, 2018, and the landlord's agent (referred to as the "landlord" herein) attended, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The landlord testified that the Notice of Dispute Resolution Proceeding package (the "package") was served on the tenant by way of Canada Post registered mail, and which was mailed on October 14, 2018. The landlord submitted into evidence a copy of the Canada Post tracking number and receipt. According to Canada Post's online delivery progress information website, the package was not picked up by the tenant. I note that failure by the respondent to pick up his mail does not void service. Given the above, I find that the landlord served the tenant with the package in compliance with section 89 of the Act.

I confirmed with the landlord's agent the correct legal name of the landlord, which has been amended on this application.

### Issues to be Decided

1. Is the landlord entitled to an order of possession of the rental unit for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent and for recovery of the filing fee?

### Background and Evidence

The landlord testified that the landlord took over the tenancy agreement on May 31, 2018. The tenancy is a month to month rental. Monthly rent is in the amount of \$1,300.00 and the tenant paid a security deposit of \$650.00. A copy of the written tenancy agreement was submitted into evidence, along with a copy of a bank receipt.

The landlord then testified that the tenant did not pay the entire rent for September 2018 and owes \$100.00 in unpaid rent for that month. In addition, the tenant has not paid rent for October 2018 and November 2018, and in total owes \$2,700.00 in unpaid rent. The landlord also requested that the tenant pay compensation in the amount of \$100.00 for recovery of the filing fee.

Then landlord testified that they served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenant on October 2, 2018, by posting the Notice on the tenant's door. Service was executed by the building manager "W.E." and witnessed by a third party.

In support of its claims, the landlord submitted into evidence a copy of the Notice and a Proof of Service document.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if the tenant paid rent within five days of service. The Notice also explained that the tenant had five days from the date of service to dispute the

Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support her submission, that the tenant did not pay the full rent for September 2018 and has not paid for October and November. A total amount of \$2,700.00 is currently owed by the tenant in rent. There is insufficient evidence before me that the tenant had a right under the Act to deduct some or all of the rent, and no evidence indicating that the tenant applied to cancel the Notice.

Taking into consideration the undisputed oral testimony of the landlord's agent, the documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving its claim that the tenant owes \$2,700.00 in rent.

As the landlord is successful in its claim, I grant the landlord a monetary award in the amount of \$100.00 for recovery of the filing fee.

I hereby order that the landlord retain the security deposit in the amount of \$650.00 in partial satisfaction of the above-granted monetary awards and I grant a monetary order in the amount of \$2,150.00.

Regarding the order of possession sought by the landlord, 55(2)(b) of the Act states that

A landlord may request an order of possession of a manufactured home site in any of the following circumstances by making an application for dispute resolution: [. . .]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

In this case, the landlord applied for dispute resolution seeking an order of possession, the landlord issued a notice to end the tenancy, the tenant did not dispute the Notice, and the time for making that application had expired. Therefore, I grant the landlord an order of possession.

Conclusion

I grant the landlord an order of possession, which must be served on the tenant and is effective two (2) days from the date of service. The order of possession 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 in the amount of \$2,150.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

This decision is final and binding, except where as permitted 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 Act.

Dated: November 20, 2018

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Residential Tenancy Branch