



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNRL-S & FFL

### **Introduction**

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. An Order for Possession for cause
- b. A Monetary Order for non-payment of rent.
- c. An Order to retain the security deposit.
- d. An Order to recover the cost of the filing fee.

The tenant(s) failed to appear at the scheduled start of the hearing which was 9:30 a.m. on December 7, 2018. Two representatives of the landlord were present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the scheduled start time in order to enable the tenant to call in. The tenant(s) failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The representatives of the landlord were given a full opportunity to present testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

### **Preliminary Matter:**

Rule 4.2 of the Rules of Procedure provides as follows:

#### 4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I ordered that the Application for Dispute Resolution filed by the landlord be amended to include a claim for non-payment of the rent for November 2018 in the sum of \$1799.

I find that the one month Notice to End Tenancy was served on the Tenant by posting and by mailing by registered mail addressed to the tenant on September 27, 2018. I find that the 10 day Notice to End Tenancy was served on the Tenant by posting and by mailing, by registered mail addressed to the Tenant on October 17, 2018.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. It further provides that a party cannot avoid service by refusing to pick up their registered mail. I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the Tenant by mailing, by registered mail to where he resides on October 30, 2018 and that it was sufficiently served even though the tenant failed to pick up the registered mail package.

The landlord gave evidence that she believes the Tenant has sublet the rental unit. The landlord did not consent to such a sublet. The landlord testified that in addition to sending the Application for Dispute Resolution/Notice of Hearing by registered mail to where the Tenant resides she posted a copy of the Landlord's Application for Dispute Resolution on the door to the rental unit. She also advised the person who is occupying the rental unit of this hearing. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on July 1, 2018 and end on June 30, 2018. The rent is \$1799 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$899.50 on June 22, 2018.

The tenant(s) failed to pay the rent for the months of July, August, September, October and November 2018 and the sum of \$8995 remains owing.

The tenant(s) or a person who has gained access by the tenant continues to reside in the rental unit. The rent for December has not been paid. .

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession on 2 days notice.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of July, August, September, October and November 2018 for a total of \$8995. In addition the landlord has established a claim of \$125 for five late charges (\$25 each) and \$125 for five NSF charges for a total of \$250. I granted the landlord a monetary order in the sum of \$9245 plus the sum of \$100 in respect of the filing fee for a total of \$9345

Security Deposit

I determined the security deposit plus interest totals the sum of \$899.50. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$8445.50.

Conclusion:

I ordered that the landlord shall retain the security deposit of \$899.50. In addition I ordered that the Tenant pay to the landlord the sum of \$8445.50.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

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, 2018

---

Residential Tenancy Branch