



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding CMHA FOR THE KOOTENAYS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNRL, MNDCL

### Introduction

This hearing dealt with the Landlord's application under the Residential Tenancy Act (the "Act") for:

- an Order of Possession under a One Month Notice to End Tenancy for Cause pursuant to section 55;
- compensation of \$2,116.00 for unpaid rent or utilities pursuant to section 67; and
- compensation of \$200.00 for monetary loss or other money owed pursuant to section 67.

The Landlord's agent MT and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

The Tenant acknowledged receipt of the Landlord's notice of dispute resolution proceeding package, amendment form, and documentary evidence. I find the Tenant was served with such documents in accordance with sections 88 and 89 of the Act. The Tenant did not submit any documentary evidence for this hearing.

### Preliminary Matter – Tenancy Has Ended

The Landlord was granted an Order of Possession in a prior dispute resolution proceeding (see file numbers referenced on the cover page of this decision). The Order

of Possession was executed on April 8, 2023. The parties agreed that the Tenant has vacated the rental unit.

Since the Landlord was already granted an Order of Possession in a different proceeding, I find the Landlord's claim for an Order of Possession in this application to no longer be necessary. As such, I dismiss this claim without leave to re-apply.

#### Preliminary Matter – Clarification of Landlord's Claims

MT explained that the Landlord's claim for compensation of \$200.00 for monetary loss or other money owed consists of:

- the \$100.00 filing fee paid for this application, and
- a \$100.00 filing fee paid for a previous dispute resolution application.

The filing fee is generally awarded to a party who is successful in their application. As mentioned during the hearing, the filing fee for the Landlord's other application should have been claimed on that application and would have been awarded based on the outcome in that application. As such, I am unable to deal with reimbursement of the Landlord's filing fee from a different application.

However, I will consider the Landlord's claim for reimbursement of the filing fee for this application under section 72(1) of the Act. I find the amendment from a claim for monetary loss to one for reimbursement of the filing fee can be reasonably anticipated, and I allow this amendment under Rule 4.2 of the Rules of Procedure.

#### Issues to be Decided

1. Is the Landlord entitled to compensation of \$2,116.00 for unpaid rent or utilities?
2. Is the Landlord entitled to reimbursement of the \$100.00 filing fee?

#### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on December 15, 2020 and ended on April 8, 2023. Rent was \$529.00 due on the first day of the month. The Tenant paid a security deposit of \$349.00.

MT explained that monthly rent was initially \$630.00 as per the tenancy agreement, but was reduced to \$529.00 in December 2021 and remained at that amount until the tenancy ended.

MT submitted that the Tenant failed to pay rent for the four-month period from November 2022 to February 2023. MT confirmed the amount owing is \$2,116.00.

The Tenant stated that she tried to pay rent and tried to pay it with the help of a rent bank. According to the Tenant, MT refused to accept payment of back rent from the rent bank. The Tenant indicated that she did not think she needs to pay now since the previous attempts to pay were refused. The Tenant acknowledged that the amount claimed by the Landlord remains unpaid.

MT confirmed she had received a phone call from the rent bank. According to MT, the rent bank had requested that the tenancy continue as a condition for them to help pay the rent owing by the Tenant. MT explained she was unable to make that promise due to the pending eviction, and so the rent bank did not make any payment to the Landlord.

MT stated that the Landlord had provided multiple ways for the Tenant to pay rent, including cash, cheque, debit machine, and e-transfer.

### Analysis

#### *1. Is the Landlord entitled to compensation of \$2,116.00 for unpaid rent or utilities?*

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the parties agreed that rent of \$529.00 was due on the first day of each month under the parties' tenancy agreement. I find it is undisputed that the Tenant neglected to pay rent to the Landlord from November 2022 to February 2023, and that the amount of unpaid rent for this period is \$2,116.00 (\$529.00 per month × 4 months).

I find there is insufficient evidence to show that the Tenant had a legal right under the Act to withhold payment of rent to the Landlord. The legal reasons under the Act for a tenant to deduct from rent include:

- The tenant paid too much for a security or pet damage deposit (section 19(2))
- The tenant paid for emergency repairs (section 33(7))
- The tenant paid an illegal rent increase (section 43(5))
- The tenant applied compensation to the last month's rent where the landlord has issued a notice to end tenancy for landlord's use (section 51(1.1))
- The tenant was awarded monetary compensation or a rent reduction by the Residential Tenancy Branch (section 72(2)(a))

I do not find any of these reasons to be applicable in the circumstances.

Furthermore, I accept MT's explanation as to why the Landlord did not receive rent from the rent bank. I find the Landlord was not obligated to accept rent with conditions attached. I find that such an offer was more akin to a settlement offer rather than a straight payment of rent.

I conclude the Tenant did not pay rent of \$2,116.00 to the Landlord as required and did not have a legal right to withhold payment of rent.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$2,116.00 for unpaid November 2022 to February 2023 rent.

*2. Is the Landlord entitled to reimbursement of the \$100.00 filing fee?*

The Landlord has been successful in this application. Pursuant to section 72(1) of the Act, I grant the Landlord reimbursement of its filing fee.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's security deposit in partial satisfaction of the total amount awarded to the Landlord in this decision.

The Monetary Order granted to the Landlord for the balance is calculated as follows:

<b>Item</b>	<b>Amount</b>
Unpaid Rent from November 2022 to February 2023 (\$529.00 per month × 4 months)	\$2,116.00
Filing Fee	\$100.00
<b>Subtotal</b>	<b>\$2,216.00</b>
Less Security Deposit	- \$349.00
<b>Total Monetary Order for Landlord</b>	<b>\$1,867.00</b>

### Conclusion

The Landlord's claims for unpaid rent and recovery of the filing fee for this application are successful.

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain the Tenant's **\$349.00** security deposit in partial satisfaction of the total amount awarded.

Pursuant to sections 67 and 72(1) of the Act, I grant the Landlord a Monetary Order in the amount of **\$1,867.00** for the balance awarded. This Order may be served on the Tenant, filed in the Small Claims Division of the Provincial Court of British Columbia, and enforced as an Order 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: April 11, 2023

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Residential Tenancy Branch