



# 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 is the Landlord's Application for Dispute Resolution for an Order of Possession; a Monetary Order; and to recover the cost of the filing fee from the Tenant.

The Landlord's agents gave affirmed testimony at the Hearing.

The Landlord's agent KP testified that the Notice of Hearing documents were mailed to the Tenant, via registered mail, to the rental unit on March 20, 2012. The Landlord provided a copy of the registered mail receipt and tracking number in evidence.

Based on the affirmed testimony of the Landlord's agent and the documentary evidence provided by the Landlord, I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

### **Preliminary Matters**

During the course of the Hearing the Landlord's agent KP testified that the Tenant remains in the rental unit. She asked to amend her application to include loss of revenue for the month of April, 2012, and to apply the security deposit towards the Landlord's monetary award.

I amended the Landlord's application to include these issues.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent, loss of revenue and late fees?
- May the Landlord apply the security deposit towards its monetary award?

## **Background and Evidence**

The Landlord's agents gave the following testimony and evidence:

The Landlord provided a copy of the tenancy agreement in evidence. This tenancy began on February 16, 2009. Monthly rent is \$1,000.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$500.00 on February 2, 2009.

On March 6, 2012, the Landlord issued a Notice to End Tenancy for unpaid rent in the amount of \$1,000.00 for the month of March, 2012 (the "Notice"). A copy of the Notice was provided in evidence. The Landlord's agent KQ testified that she served the Tenant with the Notice by posting the Notice on the Tenant's door at the rental unit at 4:40 p.m. on March 6, 2012. The Tenant has not disputed the Notice.

The Landlord's agent KP testified that the Tenant has not paid any rent since the Notice was issued and that she has not paid any rent towards April, 2012, which is now overdue. The Landlord's agent requested a monetary order for unpaid rent, loss of revenue and late fees, calculated as follows:

Unpaid rent for March, 2012	\$1,000.00
Loss of revenue for April, 2012	\$1,000.00
Late fees for March and April, 2012	<u>\$50.00</u>
TOTAL AMOUNT CLAIMED	\$2,050.00

The Landlord's agent KP testified that that the Landlord was issued an Order of Possession and Monetary Order for unpaid rent as a result of a Dispute Resolution Hearing in July of 2011, but that the Landlord reinstated the tenancy after the Tenant paid the arrears. The Landlord's agent testified that the Tenant has been issued multiple Notices to End Tenancy over the course of the tenancy (most recently in January and February, 2012). She testified and that the Landlord provided receipts for "use and occupancy only" for January, 2012 and February, 2012, but did not file an application to enforce the Notices to End Tenancy for those months.

## **Analysis**

I accept that the Landlord's agent KQ served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on March 6, 2012. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. I find that the tenancy has ended and that the Landlord is entitled to an Order of Possession. I hereby provide the

Landlord an Order of Possession effective 2 days after service of the Order upon the Tenant.

I accept the undisputed testimony of the Landlord's agent that the Tenant has not paid any money for March or April, 2012. The Tenant is overholding and I find that the Landlord has suffered a loss as a result. I find that the Landlord is entitled to a monetary award for unpaid rent and loss of revenue for the months of March and April, 2012, in the total amount of \$2,000.00.

The tenancy agreement includes a clause for late fees for March and April in the amount of \$50.00. Late fees are fees that are imposed for late "rent" and, I find that the tenancy ended on March 19, 2012. Therefore, I allow the Landlord's claim for late fees for March, 2012, but not for the month of April, 2012.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary award. No interest has accrued on the security deposit.

The Landlord has been successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Monetary award for March and April, 2012 unpaid rent and loss of revenue	\$2,000.00
Late fees for March, 2012	\$25.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,075.00
Less security deposit	<u>- \$500.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$1,575.00</b>

### **Conclusion**

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$1,575.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 04, 2012.

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Residential Tenancy Branch