



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

It is readily apparent from the information included on the Application for Dispute Resolution that the Landlord is also seeking a monetary Order for money owed or compensation for damage or loss and to retain all or part of the security deposit, and the Application for Dispute Resolution has been amended accordingly.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution, the Notice of Hearing, and documentary evidence were sent to the Tenant at the rental unit, via registered mail, on May 07, 2012. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent and late fees; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Agent for the Landlord stated that this tenancy began on August 15, 2011; that the Tenant is required to pay monthly rent of \$700.00 by the first day of each month; and that the Tenant paid a security deposit of \$350.00.

The Agent for the Landlord stated that the Tenant has not yet paid \$350.00 in rent for February, \$230.00 in rent for March, \$270.00 in rent for April, and \$700.00 in rent for May.

The Agent for the Landlord stated that she personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of March 13, 2012, on March 02, 2012. She stated that the Tenant has paid some of the rent since he was served with the Notice to End Tenancy and that he was issued receipts for those payments which clearly indicated the payment was for "use and occupancy only".

The Landlord is also seeking compensation, in the amount of \$100.00, as the Tenant did not pay rent, in full, when it was due in February, March, April, and May of 2012. In the tenancy agreement, which was submitted in evidence, the Tenant agreed to pay a fee of \$25.00 whenever he is late paying rent.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$700.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant currently owes rent of \$580.00 for the period ending March 31, 2012. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$580.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that on March 02, 2012 the Tenant was personally served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by March 13, 2012, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit on March 13, 2012, I find that he is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. As he has already been ordered to pay rent for the period between March 13, 2012 and March 31, 2012, I find that the Landlord has been compensated for that period.

I also find that the Tenant must compensate the Landlord for the month of April, in the amount of \$700.00. As the Tenant has already paid \$430.00 in rent for April, I find that he still owes the Landlord \$270.00 for this month.

I find that the Tenant must also compensated the Landlord for the 28 days in May that he remained in possession of the rental unit, at a daily rate of \$22.58, which equates to \$632.24.

I find that the Tenant fundamentally breached the tenancy agreement when he did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when he did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that his continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for the remainder of May of 2012 as the Tenant had not vacated the rental unit. I therefore find that the Tenant must compensate the Landlord for the loss of revenue experienced between May 28, 2012 and May 31, 2012, which is \$67.76.

As the Tenant did not pay his rent, in full, when it was due on February 01, 2012 and March 01, 2012 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to late fees of \$50.00 for these two months.

As this tenancy had ended by April 01, 2012, I find that the Tenant was not legally obligated to pay rent by the first day of that month or by the first day of May. I therefore find that the Landlord is not entitled to late fees for these two months.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$1,650.00, which is comprised of \$1,550.00 in unpaid rent/loss of revenue, \$50.00 in late fees, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit of \$350.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,300.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: May 28, 2012.

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Residential Tenancy Branch