



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR MND MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an order of possession for unpaid rent; a monetary order for unpaid rent and for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; to keep all or part of a security deposit; and to recover the cost of the filing fee.

The agent for the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The landlord testified that the tenant was served the Notice of a Dispute Resolution Hearing on May 18, 2012 by registered mail. A copy of the registered mail receipt was provided in advance of the hearing as documentary evidence. The tenant did not attend the hearing.

### Preliminary and Procedural Matter

The agent for the landlord testified that the rent for May 2012, was paid late on June 7, 2012, by money order after filing this application. The agent for the landlord stated that the tenant has subsequently failed to pay the rent for June 2012. As a result, the landlord requested to amend the application to include rent owed for June 2012. The landlord also stated that the tenant continues to occupy the rental unit. As this request to amend the application does not prejudice the respondent tenant as the tenant would be aware that rent is due pursuant to the tenancy agreement, and continues to occupy the rental unit, I amend the application to \$1,250.00, which consists of \$1,200.00 rent for June 2012; a late fee of \$25.00 for May 2012; and a late fee of \$25.00 for June 2012.

### Issue(s) to be Decided

- Should the landlord be granted an order of possession?
- Should the landlord be granted a monetary order?
- Should the landlord recover the filing fee?

### Background and Evidence

The agent for the landlord affirmed that fixed term tenancy agreement began on January 1, 2012 and was to expire on June 30, 2012. Rent was due on the first day of each month in the amount of \$1,200.00, according to the tenancy agreement. The tenant paid \$600.00 as a security deposit at the start of the tenancy.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities, by posting on the tenant's door on May 7, 2012. The landlord submitted a proof of service document as evidence which was signed by a third party as a witness prior to the hearing.

The agent for the landlord testified that a receipt provided for the late May 2012 rent payment received on June 7, 2012 was marked for "use and occupancy only" and was submitted as evidence. As the rental unit is still being occupied, the landlord is seeking an order of possession and a monetary order for June 2012 rent that has not been paid; and the late fees for the months of May and June 2012 of \$25.00 per month pursuant to section 3.03 of the tenancy agreement.

The landlord provided copies of the written tenancy agreement; 10 Day Notice to end Tenancy for Unpaid Rent or Utilities (the "Notice"); a registered mail receipt; correspondence; and a use and occupancy receipt for the late May 2012 rent payment as evidence for this proceeding.

### Analysis

**Order of Possession** - I find that the tenant failed to pay the rent or dispute the Notice within 5 days after receiving the Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ends on the effective date of the Notice. Accordingly, I grant the landlord an order of possession.

**Claim for unpaid rent and loss of rent** – The agent for the landlord testified that May 2012 rent was received late on June 7, 2012, and a receipt was issued for use and occupancy only. The agent for the landlord stated that they have incurred a loss of June 2012 rent as no rent payments have been made in June 2012. Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenant continues to occupying the unit. The landlord will not regain possession of the unit until after service of the order of possession and has incurred a loss of rent for June 2012. I find the landlord has met the burden of proof and I award them a monetary claim of **\$1,250.00** for loss of June 2012 unpaid rent; and \$25.00 for the late fees for the months of May and June 2012 pursuant to section 3.03 of the tenancy agreement.

The landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus interest as follows:

June 2012 rent	\$1,200.00
Late fee for June 2012 rent not received	\$25.00
Filing fee	\$50.00
Less Security Deposit	(\$600.00)
<b>TOTAL</b>	<b>\$700.00</b>

### Conclusion

I find that the landlord has proven his claim and is, therefore, entitled to an order of possession effective **two days** after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of \$1,250.00 as indicated above. I order that the landlord retain the deposit and interest of \$600.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$700.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided 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 *Residential Tenancy Act*.

Dated: June 15, 2012

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Residential Tenancy Branch