



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent; a monetary order for unpaid rent and to keep all or part of a security deposit; and to recover the filing fee.

The agent for the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent for 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 hearing.

The agent for the landlord testified that the tenant was served with the Notice of a Dispute Resolution Hearing on May 31, 2012, by registered mail. A registered mail tracking number was provided during the hearing as evidence and was addressed to the respondent tenant at the rental unit. The tenant did not attend the hearing. I find that the tenant was served with the Notice of a Dispute Resolution Hearing in accordance with the *Act*.

### Preliminary Matter

The landlord submitted the application for dispute resolution on May 31, 2012. The agent for the landlord testified that the tenant continues to occupy the rental unit which resulted in a loss of June 2012 rent of \$646.00. The agent for the landlord requested to amend the monetary claim as follows:

Rent owing up to May 2012	\$321.00
June 2012 full rent owing	\$646.00
June 2012 late fee	\$25.00
<b>TOTAL</b>	<b>\$992.00</b>

As a result of the above, the landlord is seeking a total monetary order of \$992.00, consisting of unpaid rent and late fees.

Issue(s) to be Decided

- Should the landlord be granted an order of possession?
- Should the landlord be granted a monetary order for unpaid rent and late fees?
- Should the landlord recover the filing fee?

Background and Evidence

The landlord affirmed that month to month tenancy agreement began on March 1, 2007. Rent was due on the first day of each month in the amount of \$646.00. The tenant paid \$275.00 as a security deposit on August 24, 2005.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities dated May 3, 2012, by posting on the tenant's door on May 3, 2012 with an effective date of May 13, 2012. The effective date corrects under the Act to May 16, 2012. The landlord submitted a proof of service document as evidence prior to the hearing, which was signed by a third party as a witness; and included the correct tenant and rental unit address.

The agent for the landlord testified that section 43 of the tenancy agreement shows a late fee of \$25.00. The following is a summary of the agent for the landlord's oral testimony with respect to rent payments and the amount owing by the tenant.

Rent arrears prior to March 2012	\$271.00
April 2012 rent due April 1, 2012	\$646.00
April 3, 2012 payment by tenant	(\$246.00)
April 3, 2012 late fee	\$25.00
April 15, 2012 payment by tenant	(\$200.00)
May 2012 rent due May 1, 2012	\$646.00
May 1, 2012 payment by tenant	(\$200.00)
May 3, 2012 late fee	\$25.00
May 30, 2012 payment by tenant (marked use and occupancy only)	(\$646.00)
June 2012 rent due June 1, 2012	\$646.00
June 3, 2012 late fee	\$25.00
<b>TOTAL RENT OWING INCLUDING LATE FEES</b>	<b>\$992.00</b>

The landlord provided copies of the written tenancy agreement; and a 10 Day Notice to end Tenancy for Unpaid Rent or Utilities (the "Notice"); a May 30, 2012 money order marked as use and occupancy only; as evidence for this proceeding.

### Analysis

**Order of possession** - I find that the tenant failed to pay the rent owing 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 corrected 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 at the time the landlord submitted their application for dispute resolution, the tenant owed \$321.00 in unpaid rent. 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 occupy the unit. The landlord will not regain possession of the unit until after service of the order of possession and has not received rent for the month of June 2012. The agent for the landlord testified that the landlord has suffered a loss of rent for June 2012 and that a late fee of \$25.00 would apply. I find the landlord has met the burden of proof and I award the landlord a monetary claim of **\$992.00** as described above.

The landlord is holding a security deposit of \$275.00 which was paid by the tenant on August 24, 2005. Including interest of \$9.74, the total security deposit is \$284.74.

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 order of **\$1,042.00** which includes the \$50.00 filing fee, 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.

### Conclusion

I find that the landlord has proven their 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 \$1,042.00 as indicated above. I order that the landlord retain the deposit and interest of \$284.74 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for

the balance due of **\$757.26**. 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 19, 2012

---

Residential Tenancy Branch