



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on May 3, 2012. The landlord testified that he sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on May 17, 2012. The landlord provided the Canada Post Tracking Number to confirm this mailing. He also said that he discussed the tenant's receipt of the hearing package with the tenant and he was certain that she received it. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

At the commencement of the hearing, the landlord testified that the landlord accepted a payment of \$1,404.00 from the tenant for "use and occupancy only" on June 4, 2012. He said that the tenant was clearly advised at that time that the landlord's acceptance of the June 4, 2012 payment did not affect the landlord's ongoing attempt to end this tenancy on the basis of the 10 Day Notice. The landlord reduced the amount of the requested monetary award from \$1,450.00 to \$96.00.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is

the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on September 1, 2010. When the initial term of the tenancy ended, the tenancy continued as a periodic tenancy. Monthly rent is currently \$700.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$350.00 security deposit paid on September 1, 2010.

The landlord testified that the 10 Day Notice was issued to the tenant for \$700.00 in unpaid rent and a \$25.00 late fee applied in accordance with the tenancy agreement. The landlord's application for dispute resolution sought a monetary award of \$1,450.00 for unpaid rent for May and June 2012, as well as two late charges of \$25.00 each.

The landlord's revised monetary award of \$96.00 was for \$46.00 in unpaid rent or late fees for May and June 2012, and recovery of the landlord's \$50.00 filing fee. The landlord stated that the tenant has been late in paying rent three consecutive months. The landlord requested an end to this tenancy by June 30, 2012 and an Order of Possession effective that date.

### Analysis

Based on the undisputed evidence presented by the landlord, I am satisfied that the tenant's payment on June 4, 2012 did not continue this tenancy or cancel the landlord's 10 Day Notice. The tenant failed to pay her May 2012 rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 16, 2012. As that has not occurred, I find that the landlord is entitled to an Order of Possession to take effect by 1:00 p.m. on June 30, 2012. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by the date required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that the landlord is entitled to a monetary award of \$96.00. This award enables the landlord to recover unpaid rent, late fees and the filing fee for the landlord's application. To give effect to this monetary award, I allow the landlord to retain \$96.00 from the tenant's \$350.00 security deposit.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on June 30, 2012. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the landlord's favour in the amount of \$96.00. In order to implement this award, I order the landlord to retain \$96.00 from the tenant's security deposit. The value of the tenant's security deposit currently retained by the landlord is reduced from \$350.00 to \$254.00.

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: June 07, 2012

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Residential Tenancy Branch