



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, MNDC

### 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; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The landlord and the female tenant (the tenant) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on her door by the landlord on May 15, 2012. Although a second 10 Day Notice was also provided for this tenancy to reflect the unpaid rent owing as of June 1, 2012, the landlord's application referred solely to the 10 Day Notice issued in June, the issue before me in this application. I am satisfied that the 10 Day Notices were served by the landlord in accordance with the *Act*.

The female tenant testified that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on May 30, 2012. I am satisfied that the landlord served this package to the female tenant in accordance with section 89(1) and (2) of the *Act*. This enables the landlord to seek both an end to this tenancy and a monetary award from the female tenant.

The landlord also testified that he sent the male tenant a copy of the dispute resolution hearing package by registered mail to the rental unit on May 30, 2012. He provided a copy of the Canada Post Tracking Number to confirm this registered mailing.

Notifying a party of a notice of hearing by registered mail is allowed under section 89(1) of the *Act*. However, there is both written and sworn oral testimony before me that the landlord was aware well in advance of this hearing that the male tenant has not been residing at the rental unit since December 2011. Under these circumstances, I find that

the landlord's application for a monetary Order against the male tenant has not been served to the male tenant in accordance with section 89(1) of the *Act*. I dismiss the landlord's application for a monetary award against the male tenant with leave to reapply.

#### 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 against the female tenant arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

#### Background and Evidence

This one-year fixed term tenancy commenced on October 1, 2011. Monthly rent was set at \$1,250.00, payable in advance on the first of each month. The tenants are responsible for heat and hydro. The landlord continues to hold the tenants' \$625.00 security deposit paid on September 30, 2011.

The landlord entered undisputed written evidence that he knew that the tenants separated in December 2011, with the female tenant remaining in the rental unit. He provided written evidence that he advised the female tenant in mid-January 2012 that her monthly income was insufficient to enable her to continue in this tenancy and that she would have to make plans to vacate the rental unit. However, he has not entered into oral or written evidence any record of having issued a 10 Day Notice until he issued the 10 Day Notice on May 15, 2012. His 10 Day Notice of that date to both tenants named in the residential tenancy agreement identified \$2,392.18 in rent owing as of that date.

The landlord's application for a monetary Order of \$3,075.07 included unpaid rent of \$1,250.00 for each of May and June 2012, plus \$475.07 that was owing at that time from April 2012. The tenant had paid \$774.93 towards her April 2012 rent as of May 15, 2012. The parties agreed that the tenant paid \$567.11 on May 23, 2012, which the landlord applied to the amount owing from April 2012 and part of May 2012. The tenant testified that she understood that her payment on that date did not result in the landlord's abandonment of his attempt to end this tenancy for non-payment of rent.

#### Analysis

The tenants failed to pay the amount owing from this tenancy identified as owing in the May 2012 10 Day Notice in full within five days of the landlord's service of the 10 Day Notice. The tenants have 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 tenants' failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required them to vacate the premises by May 28, 2012. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the landlord's undisputed evidence regarding the amounts of rent owing, I find that the landlord is entitled to recover unpaid rent of \$475.07 for April 2012, \$1,250.00 for May 2012, \$1,250.00 for June 2012, less the \$567.11 payment of May 23, 2012.

I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of this monetary award. No interest is payable over this period.

#### Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) 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 Order in the landlord's favour against the female tenant CM under the following terms which allows the landlord to recover unpaid rent owing from this tenancy and to retain the security deposit for this tenancy:

Item	Amount
Unpaid Rent Owed as of May 15, 2012 for April 2012	\$475.07
Unpaid Rent for May 2012 Owing as of May 15, 2012	1,250.00
Less Female Tenant's Payment of May 23, 2012	-567.11
Unpaid Rent June 2012	1,250.00
Less Security Deposit	-625.00
<b>Total Monetary Order</b>	<b>\$1,782.96</b>

The landlord is provided with these Orders in the above terms and the female tenant must be served with a copy of these Orders as soon as possible. Should the female tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 21, 2012

---

Residential Tenancy Branch