



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR; MNR; MNSD; FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent for May, 2012 and loss of revenue for June, 2012; to retain the security deposit in partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent testified that each of the Tenants were mailed the Notice of Hearing documents, by registered mail, to the rental unit on May 31, 2012. The Landlord provided copies of the registered mail receipts and tracking numbers in evidence. The Landlord's agent stated that the Tenant JE was also handed copies of the documents, "one and a half weeks ago" at the rental unit.

The Tenant JE testified that the Tenant MN moved out of the rental unit on May 15, 2012. The Landlord's agent did not dispute this fact.

Based on the parties' testimony and the documentary evidence provided by the Landlord, I am satisfied that the Landlord served the Tenant JE by registered mail pursuant to the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents.

Section 89(1)(c) of the Act requires that documents be sent to the address at which the person resides. I find that the Landlord has not established service of the Notice of Hearing documents upon the Tenant MN, because she no longer resided at the rental unit on the day the documents were deemed to be delivered. Therefore, the Landlord's application against the Tenant MN is dismissed. The Hearing continued against the Tenant JE only.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This is a term lease tenancy which started December 1, 2011, and is set to expire on November 30, 2012. Monthly rent is \$840.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$420.00 on November 30, 2011.

The Landlord's agent gave the following testimony and evidence:

The Landlord's agent testified that the Tenants did not pay rent when it was due on May 1, 2012. On May 3, 2012, the Landlord's agent served the Tenant JE with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by handing the document to him at the rental unit.

The Landlord's agent testified that the Tenants made a payment in the amount of \$640.00 immediately after being served with the Notice, but that the Tenants still owe \$200.00 for May rent and that no rent has been paid for June, 2012.

The Landlord seeks a monetary award for \$1,040.00 and to apply the security deposit in partial satisfaction of that award.

The Tenant gave the following testimony:

The Tenant testified that rent has been paid in full for May and for June, 2012. He stated that he paid \$640.00 on May 3 and \$220.00 on May 4, 2012. The Tenant provided copies of numbered receipts in evidence dated May 3 (for use and occupancy only) and May 4, 2012. The receipts were numbered 11098 and 11120.

The Landlord's agent gave the following reply:

The Landlord's agent testified that he was not provided copies of the Tenant's documentary evidence and that he was unaware that the Tenant would be making that assertion. He stated that the Tenant MN paid \$420.00 and the Tenant JE paid \$200.00 on May 3, 2012, leaving a balance owing of \$220.00. He testified that the Tenant JE was given a receipt in the amount of \$640.00 (receipt 11098), but that the next day the Tenant MN wanted a receipt to indicate that she had paid half of the rent. Therefore, another agent of the Landlord's "cancelled" the Landlord's copy of the receipt in the amount of \$640.00 and wrote the Tenant MN a "replacement receipt" for \$420.00 (receipt 11119) and the Tenant JE a "replacement receipt" for \$220.00 (receipt 11120). The Landlord's agent stated that if he had known that the Tenant JE would be asserting that full rent had been paid, he would have provided a copy of the "replacement receipt" 11119 that was written to the Tenant MN in evidence.

As the Tenant had not served the Landlord with copies of his documentary evidence and the Landlord's bookkeeping methods were unusual, I provided both parties an opportunity to fax me further documentation by 4:00 p.m., June 22, 2012, and to provide each other copies of the documents, in order to substantiate their claims. I explained to the parties that we might reconvene within 2 weeks if I had any further questions.

The Tenant provided no further documentary evidence to support his claim that he paid rent in full for May and for June, 2012.

The Landlord provided a proof of service document that he had posted copies of the documents that he faxed to the Residential Tenancy Branch to the Tenant's door at 4:00 p.m., June 22, 2012. The proof of service document was signed by a witness.

Included in the Landlord's faxed documents was a receipt dated May 4, 2012, to the Tenant MN in the amount of \$420.00 (receipt 11119), and a copy of the tenant ledger.

### **Analysis**

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish its claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlord has provided sufficient evidence to prove its claim for the following reasons:

- The Tenant was provided an opportunity to provide further proof that rent had been paid in full for May and June, 2012, and did not do so.
- The Landlord provided evidence that rent in the amount of \$200.00 was owed for May and \$840.00 remains unpaid for June, 2012.

- The Tenant's receipt 11120 is for \$220.00. If I were to accept the Tenant's testimony, the amount of \$220.00 is \$20.00 more than was required to pay the rent in full. However, it is the exact amount that the Tenant JE would have contributed if the Tenant MN had paid her half, \$420.00. Therefore, I find that it is more probable than not that the Tenant JE did not pay the rent in full on May 4, 2012.

I accept that the Landlord served the Tenant with the Notice to End Tenancy by handing the Notice to the Tenant on May 3, 2012. The Tenant did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on May 13, 2012. I find that the Landlord is entitled to an Order of Possession.

I find that the Landlord's agent has established a monetary claim for unpaid rent and loss of rent for the months of May and June, in the total amount of \$1,040.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

The Landlord has been successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

I hereby provide the Landlord a Monetary Order, calculated as follows:

Un paid rent and loss of revenue	\$1,040.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,090.00
Less security deposit	<u>- \$420.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$670.00</b>

### **Conclusion**

I hereby provide the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenant JE**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$670.00** for service upon the Tenant JE. This Order must be served on the Tenant and may be filed in the

Provincial Court of British Columbia (Small Claims) 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: June 25, 2012.

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Residential Tenancy Branch