



# 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 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 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.

Both parties 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 he signed a document attesting to the landlord's claim that the landlord handed him the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) at 10:30 a.m. on July 2, 2012. The tenant also confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on July 30, 2012. I am satisfied that the landlord served these documents and the landlord's written evidence package to the tenant in accordance with the *Act*.

The landlord read into evidence the wording of a copy of a receipt issued by the landlord for the tenant's payment of \$1,690.00 towards his outstanding debt on August 9, 2012. The landlord noted that this payment receipt stated that the payment had been accepted by the landlord for use and occupancy only and not to reinstate the tenancy, as the landlord required vacant possession by August 31, 2012. The landlord withdrew his application for a monetary award.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? 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 January 1, 2008. At the expiration of the initial term, the tenancy converted to a periodic tenancy. Monthly rent

is currently set at \$820.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$385.00 security deposit paid on November 29, 2007.

The landlord issued the 10 Day Notice for non-payment of \$845.00 owing for rent and a late fee for July 2012. The parties agreed that the tenant did not pay any portion of that amount identified as owing until the tenant left the payment for July and August 2012 plus late fees for both months in the landlord's deposit mailbox on August 8, 2012.

Although the landlord was no longer seeking a monetary award for unpaid rent, the landlord requested an end to this tenancy and an Order of Possession as the landlord is not satisfied that the tenant has the means to continue in this tenancy. The tenant testified that he is actively seeking employment after a bout with illness and that he has the funds to pay his September 2012 rent.

#### Analysis

I accept the landlord's undisputed sworn oral testimony that the landlord accepted the tenant's \$1,690.00 payment for use and occupancy only, but not as an extension of this tenancy beyond August 31, 2012. There is also undisputed testimony that the tenant failed to pay the July 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 July 12, 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 August 31, 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 that date and time, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord has been successful in the application for dispute resolution, I find that the landlord is entitled to recover the \$50.00 filing fee for this application from the tenant. I allow the landlord to retain \$50.00 from the tenant's security deposit in order to satisfy this monetary award.

#### Conclusion

The landlord is provided with a formal copy of an Order of Possession to take effect by 1:00 p.m. on August 31, 2012. 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.

The landlord's application for a monetary award for unpaid rent is withdrawn.

I allow the landlord to recover the \$50.00 filing fee for the landlord's application for dispute resolution. To implement this portion of my decision, I order the landlord to retain \$50.00 from the tenant's security deposit. The revised value of the tenant's security deposit still held by the landlord is thus reduced by \$50.00.

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: August 24, 2012

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Residential Tenancy Branch