



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPL, 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;
- an Order of Possession for landlord's use of the property 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 his 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 ask questions of one another. The landlord testified that he handed a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the 2 Month Notice) to the tenant on July 30, 2012. Although the tenant testified that she received the 2 Month Notice on that date, she said that it was posted on her door. The tenant confirmed that the landlord handed her a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on August 7, 2012. The parties both entered copies of these notices into written evidence. The tenant confirmed that on August 23, 2012, she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on August 16, 2012. I am satisfied that the landlord served all of the above documents and his written evidence package to the tenant in accordance with the *Act*.

The tenant submitted late written evidence for this hearing. The landlord said that he received this information, had read most of it, and did not object to proceeding with the hearing. On this basis, I have considered the tenant's late written evidence submission in reaching my decision.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or for landlord's use of the property? Is the landlord entitled to a monetary award for unpaid rent? 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 periodic tenancy commenced on March 15, 2010, when the tenant rented the premises from the previous owner of this property. Monthly rent is currently set at \$600.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$350.00 security deposit paid on March 4, 2010.

The current landlord took possession of the property on July 27, 2012 after purchasing it and issued the 2 Month Notice three days later. The tenant testified that she has not provided written notice to the landlord of her intention to vacate the rental unit prior to the October 1, 2012 effective date of the 2 Month Notice. The tenant testified that she did not pay rent for August 2012, as she understood that she was allowed to choose one of the last two months of her tenancy to withhold rent. She confirmed the landlord's claim that she has not paid any rent for August or September 2012.

The landlord applied for an Order of Possession and a monetary award of \$1,200.00 for unpaid rent for August and September 2012.

The tenant's written evidence described many incidents and interactions between her and the landlord since he took possession of the property on July 27, 2012. She also provided a series of written statements from individuals who were familiar with her interactions with the previous and/or present landlord. None of the tenant's written evidence had a bearing on the issues of non-payment of rent for August and September 2012, the principal issue before me in the landlord's application. Although the tenant had one of the authors of these letters of support available as a witness, his testimony unrelated to the issue of non-payment of rent was unnecessary for the purposes of hearing the landlord's application.

### Analysis

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord's use of the property (pursuant to section 49 of the *Act*) to end the tenancy early by "giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice." As the tenant testified that she has not provided written notice to end her tenancy before the October 1, 2012 effective date of the 2 Month Notice, this section does not apply to this tenancy.

Section 51 of the *Act* reads in part as follows:

**51** (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

*(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

The opportunity to withhold “the last month’s rent” when a 2 Month Notice has been issued is outlined as follows in the second page of the 2 Month Notice issued by the landlord to the tenant:

- *If this Notice is ending a periodic tenancy, the tenant may withhold the last month’s rent instead of being paid compensation...*

The tenant appears to have misread this section of the 2 Month Notice and received inaccurate advice that she could choose to withhold rent for the month of her choosing to satisfy the provision of section 51(1.1) of the *Act*. I find that the “last month’s rent” for the purposes of the 2 Month Notice issued on July 30, 2012 with an effective date of October 1, 2012 applied to the rent owing for September 2012.

There is undisputed evidence that the tenant failed to pay the August 2012 rent within five days of receiving the 10 Day Notice and had no legal right do so. 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 her tenancy on the effective date of the 10 Day Notice. In this case, this required the tenant to vacate the premises on the basis of the 10 Day Notice by August 17, 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. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

In coming to this decision, I recognize that the tenant maintains that the value of her tenancy decreased as a result of a host of actions she attributes to the landlord since he took possession of the property on July 27, 2012. However, section 26(1) of the *Act* establishes that “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the

rent.” Without an order from a Dispute Resolution Officer permitting the tenant to withhold part of her monthly rent, she had no right under the *Act* to withhold any portion of her rent for August 2012. The tenant has not filed an application for dispute resolution for any such order.

Turning to the landlord’s application for a monetary award, I find undisputed evidence that the tenant has not paid any rent for August or September 2012. Had the tenant paid her rent for August 2012 and the tenancy continued until the effective date of the 2 Month Notice, the tenant would then have been able to withhold her rent payment for September 2012. However, this tenancy ended on August 17, 2012 on the basis of the landlord’s 10 Day Notice. I find that the tenancy ended before the tenant would have been eligible to withhold her rent for September 2012 in accordance with section 51(1.1) of the *Act*. Consequently, I find that the landlord is entitled to a monetary award of \$1,200.00 for unpaid rent for August and September 2012.

I allow the landlord’s application to retain the tenant’s security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I find that the landlord is entitled to recover his filing fee from the tenant.

As the landlord has been issued an Order of Possession for unpaid rent there is no need to consider the landlord’s application to obtain an Order of Possession for landlord’s use of the property.

### Conclusion

I provide the landlord with a formal copy of an Order of Possession on the basis of the 10 Day Notice. This Order is 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 make no decision on the landlord’s request for an Order of Possession on the basis of the 2 Month Notice.

I issue a monetary Order in the landlord’s favour under the following terms which allows the landlord to recover unpaid rent and his filing fee and to retain the tenant’s security deposit:

Item	Amount
Unpaid August 2012 Rent	\$600.00
Unpaid September 2012 Rent	600.00
Less Security Deposit	-350.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$900.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the 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: September 14, 2012

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Residential Tenancy Branch