



# Dispute Resolution Services

Page: 1

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 landlord's representative (the landlord) testified that she handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) on September 4, 2012. Although the landlord had not entered a copy of that Notice into written evidence prior to this hearing, the tenant confirmed that the landlord did serve her with the 10 Day Notice as claimed by the landlord. I am satisfied that the 10 Day Notice was served in accordance with the *Act*. I advised the landlord that I would allow her to submit a copy of the 10 Day Notice by fax to the Residential Tenancy Branch (RTB) if she did so by 3:45 p.m. on the day of this hearing. She faxed a copy of the 10 Day Notice shortly after the conclusion of this hearing and I have taken this undisputed evidence into account in making my decision.

The landlord testified that she served the tenant with a copy of the landlord's dispute resolution hearing package by placing it under his door on September 18, 2012. Although this method of service delivery is not one that is allowed under section 89 of the *Act*, the tenant confirmed that he did receive the landlord's hearing package and was notified of this hearing. Based on the sworn testimony of the parties, I find that the tenant has received the landlord's dispute resolution hearing package and that there would be no denial of natural justice in proceeding with this hearing and considering the landlord's application.

At the commencement of the hearing, the tenant clarified the spelling of his last name, as the landlord had mistakenly added an "s" to his last name in the documents she had

served to him. With the agreement of the parties, I corrected the spelling of the tenant's last name to reflect that shown above.

#### 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? 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 began on October 1, 2009. Monthly rent until recently was set at \$665.00, payable in advance on the first of each month. The tenant's monthly rent increased to \$695.00 as of October 1, 2012. The landlord said that the landlord continues to retain the tenant's \$330.00 security deposit paid on September 30, 2009.

The landlord's only written evidence entered for this hearing was a one-page rent ledger for this tenancy. This hand-written ledger reviewed the rental payments due and received for this tenancy from May 2010 until the present. The tenant did not dispute the landlord's claim that \$2,045.00 remained owing as of August 1, 2012 and \$2,710.00 was owing for rent as of September 1, 2012. The tenant did not dispute the landlord's claim that the tenant has not paid anything towards this tenancy since receiving the 10 Day Notice on September 4, 2012. He explained that he has had difficulty obtaining Employment Insurance (EI) cheques, but expected to receive a \$480.00 EI cheque on October 23, 2012. He testified that he has been promised a decision on his request to obtain retroactive EI coverage as of August 1, 2012 by Thursday, October 25, 2012. The landlord said that she had no instructions from the owner of this property that would enable her to negotiate any type of resolution of this dispute with the tenant.

#### Analysis

The tenant failed to pay the full amount of rent identified as owing in the 10 Day Notice within five days of receiving the that 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 September 15, 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.

Based on the undisputed evidence presented by the landlord, I find that the landlord has established entitlement to a monetary award of \$2,710.00 for unpaid rent owed as of September 4, 2012, and a further \$695.00 for unpaid rent owed on October 1, 2012. I allow the landlord to retain the tenant's security deposit plus relevant interest as 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 the \$50.00 filing fee from the tenant.

### 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 under the following terms which allows the landlord to recover unpaid rent and the filing fee for this application, less the retained value of the tenant's security deposit:

Item	Amount
Rent Identified as Owing as of September 4, 2012	\$2,710.00
Unpaid October 2012	695.00
Less Security Deposit	-330.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$3,125.00</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: October 22, 2012

---

Residential Tenancy Branch