



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Landlord's application: OPR; MNR

Tenant's application: MT; CNR; MNR; MNDC; RR

### **Introduction**

This Hearing was convened to consider cross applications. The Landlord seeks an Order of Possession and a Monetary Order for unpaid rent and utilities.

The Tenant seeks more time to file her application to cancel a Notice to End Tenancy for Unpaid Rent issued September 1, 2012 (the "Notice"); to cancel the Notice; for a monetary order for the cost of emergency repairs; for compensation for damage or loss under the Act, regulation or tenancy agreement; and for an Order allowing the Tenant to deduct the cost of repairs, services or facilities from the rent.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that she served the Tenant with the Notice of Hearing documents and copies of the Landlord's documentary evidence by registered mail, sent September 20, 2012, to the rental unit. The Landlord provided the registered mail receipt and tracking numbers in evidence.

The Landlord's agent stated that the Landlord was not served with the Tenant's Notice of Hearing documents.

Based on the affirmed testimony of the Landlord's agent and the documentary evidence provided by the Landlord, I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

**Commencement of Hearing** The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

We proceeded in the absence of the Tenant. The Tenant signed in at 11:11 a.m., just after I had provided the Landlord's agent with my oral decision.

I explained to the Tenant that the Decision had already been made. The Tenant acknowledged that she had not served the Landlord with a copy of her Application for Dispute Resolution.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on April 1, 2012. Monthly rent is \$800.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$400.00 on March 26, 2012 and a pet damage deposit in the amount of \$200.00 on May 7, 2012. Monthly rent does not include utilities.

The Landlord's agent testified that the gas to the rental unit was disconnected by the provider due to lack of payment of the utility bills. She testified that the Landlord and Tenant reached an agreement that the Landlord would pay the bill and arrange for the gas to be reconnected on the understanding that the Tenant would pay \$120.00 per month towards arrears. The Landlord's agent testified that the Tenant made an initial payment of \$120.00 in June, 2012, but has not made any other payments. The Landlord provided copies of the gas bills in evidence, along with a copy of the Tenant ledger indicating that the Tenant owes \$97.58 for gas used between July 3, 2012 and September 4, 2012.

The Landlord's agent stated that the Tenant has been in arrears of rent since the beginning of the tenancy, as follows:

Date	Rent due	Rent paid	Balance owing
May 1, 2012	\$800.00	\$1,125.00	\$125.00
June 1, 2012	\$800.00	\$775.00	\$150.00
July 1, 2012	\$800.00	\$400.00	\$550.00
August 1, 2012	\$800.00	\$800.00	\$550.00
September 1, 2012	\$800.00	\$400.00	\$950.00

The Landlord's agent testified that she served the Tenant with the Notice by attaching it to the Tenant's door on September 1, 2012. A Certificate of Service was provided in evidence.

**Analysis**

I accept that the Landlord's agent's testimony that the Notice was posted to the Tenant's door on September 1, 2012. Service in this manner is deemed to be effective 3 days after posting the Notice, September 4, 2012. Section 53 of the Act provides that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with the Act, the notice is deemed to be changed to the earliest date that complies with the Act.

The Tenant did not dispute the Notice or pay the rent owed within 5 days of receipt of the Notice and therefore, pursuant to the provisions of Section 46(5) of the Act, I find that Tenant is conclusively presumed to have accepted that the tenancy ended on September 14, 2012. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

Based on the affirmed testimony and documentary evidence provided, I find that the Landlord is entitled to a monetary award, calculated as follows:

Unpaid rent	\$950.00
Unpaid utilities	<u>\$97.58</u>
Total	\$1,047.58

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit and pet damage deposit in partial satisfaction of his monetary award.

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

Monetary award	\$1,047.58
Less security deposit and pet damage deposit	<u>-\$600.00</u>
Total	<b>\$447.58</b>

As the Tenant did not serve the Landlord with her Notice of Hearing documents, I hereby provide the Tenant leave to re-apply for a monetary order for the cost of emergency repairs; and for compensation for damage or loss under the Act, regulation or tenancy agreement. The remainder of her application is dismissed without leave, as the tenancy has ended.

### **Conclusion**

The Tenant's application for a monetary order for the cost of emergency repairs; and for compensation for damage or loss under the Act, regulation or tenancy agreement is **dismissed with leave to reapply**. The remainder of her application is **dismissed without leave to reapply**, as the tenancy has ended.

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant**. 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 **\$447.58** for service upon the Tenant. This Order 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: October 12, 2012.

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Residential Tenancy Branch