



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR; MNR; MNDC; FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; and to recover the cost of the filing fee from the Tenant.

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

The Landlord's agent testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were mailed to the Tenant, via registered mail, to the rental unit on September 24, 2012. The Landlord's agent provided the tracking numbers for the registered documents.

Based on the affirmed testimony of the Landlord's agent, 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. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

### **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**

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

A copy of the tenancy agreement was provided in evidence. This tenancy began on April 1, 2012. Monthly rent is \$850.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$425.00.

The Landlord's agent testified that in August, 2012, at a dispute resolution hearing, the Landlord was awarded an Order of Possession for cause and a Monetary Order for a small amount of unpaid rent. She stated that she received the Orders from the Residential Tenancy branch on August 15, 2012. The Landlord's agent did not have a copy of the Decision and Orders at the time of the Hearing, but provided the file

number. She stated that she did not enforce the Order of Possession because the Tenant assured the Landlord's agent that the arrears would be paid and the agent did not want to put the Tenant's 88 year old mother, who was also an occupant, out on the street. The Landlord's agent stated that the Tenant did not pay rent on September 1, 2012, and that the Landlord served him with a Notice to End Tenancy for Unpaid Rent on September 4, 2012 (the "Notice"), by posting the Notice to the Tenant's door. The Tenant has not moved out of the rental unit and has not disputed the Notice.

The Landlord seeks a Monetary Order in the total amount of \$2,770.00 for unpaid rent and late fees for August, September, October and November, 2012. The Landlord's agent stated that half of the monthly rent is paid directly by the Ministry and that the remaining rent is to be paid by the Tenant directly, but that the Tenant has not made any payment towards rent since July 18, 2012. The Landlord's agent stated that the Landlord has received \$425.00 from the Ministry for October, but has not yet cashed the cheque.

The Landlord's agent stated that the Landlord also seeks to apply the security deposit against the Landlord's monetary award.

### **Analysis**

I have searched the Residential Tenancy Branch electronic filing system for the Decision and Orders that the Landlord's agent made reference to in her submissions. That Hearing took place on the Landlord's application for an Order of Possession for Unpaid Rent, not for Cause. The Dispute Resolution Officer noted in his Decision that the Landlord was only seeking a monetary award for unpaid rent for July, 2012, and found that the Landlord was entitled to a monetary order for unpaid rent in the amount of \$45.00 and recovery of the \$50.00 filing fee. There was no order made with respect to deducting the monetary order from the security deposit. Therefore, I find that as there were no Orders made with respect to outstanding rent for August 2012, and that the security deposit was not extinguished, I am not barred from deciding these issues.

Based on the undisputed testimony of the Landlord's agent, I find that the Landlord reinstated the tenancy after the August Order of Possession was issued. I also find that the Landlord took reasonable steps to end the tenancy after the Tenant did not pay the rent and arrears as promised.

I accept that the Landlord's agent served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on September 4, 2012. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay all of 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 September 14, 2012. I find that the Landlord is entitled to an Order of Possession effective 2 days after serving the Order upon the Tenant.

I find that the Landlord has established a monetary claim for unpaid rent for August and September and loss of revenue for October, 2012. The Landlord may cash the Ministry cheque for October, 2012. Based on a term in the tenancy agreement providing for late fees, and in accordance with the provisions of the regulations, I allow the Landlord's claim for late fees for the months of August and September, but not for October, 2012, as those fees are imposed for late rent, not loss of revenue. I find that the Landlord's claim for loss of revenue for the month of November, 2012, is premature and this portion of its application is **dismissed with leave to reapply**.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary award.

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

The Landlord's copy of the Decision is accompanied by a Monetary Order, calculated as follows:

Unpaid rent for August and September, 2012 (\$425.00 x 2)	\$900.00
Late fees for August and September, 2012	\$40.00
Loss of revenue for October, 2012 (after cashing Ministry cheque)	\$425.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,405.00
Less security deposit	<u>- \$425.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$980.00</b>

### **Conclusion**

The Landlord's application for a monetary award for loss of revenue for the month of November, 2012, is **dismissed with leave to reapply**.

The Landlord's copy of this Decision is accompanied by 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 **\$980.00** 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 25, 2012.

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Residential Tenancy Branch