



# 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 was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and unpaid utilities, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the outset of the hearing the Landlord withdrew the application for an Order of Possession, as the Tenant vacated the rental unit approximately one week prior to this hearing.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to each Tenant at the rental unit, via registered mail, on September 01, 2012 or September 02, 2012. The Landlord cited two Canada Post tracking numbers that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however neither Tenant did not appear at the hearing.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent and unpaid utilities; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord stated that this tenancy began on June 01, 2012; that the Tenant was required to pay monthly rent of \$670.00 by the first day of each month; and that the Tenant paid a security deposit of \$200.00.

The Landlord stated that the Tenant has not paid \$86.00 of the rent that was due for June and has paid not rent for July, August, or September of 2012. The Landlord is seeking compensation for unpaid rent and loss of revenue. The Landlord stated that she did not know if her husband has advertised the rental unit for the month of October of 2012.

The Landlord stated that on July 22, 2012 she and her husband personally served each Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of August 01, 2012. This Notice was not submitted in evidence.

The Landlord stated that the Tenant was obligated to pay for utilities, which was generally about \$250.00 per month. She stated that the utility bills were to be presented to the Tenant, who was then expected to reimburse the Landlord. The Landlord was unable to state the precise utility costs incurred during this tenancy and the Landlord submitted no documentary evidence, such as utility bills, in support of this claim.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$670.00 by the first day of each month and that a security deposit of \$200.00 was paid.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not pay \$86.00 of the rent that was due for June of 2012; that the Tenant did not pay any of the rent that was due on July 01, 2012; and that the Tenant did not pay any of the rent that was due on August 01, 2012. As the Tenant was required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,426.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant was personally served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by August 01, 2012, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on August 01, 2012.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not vacate the rental unit until one week prior to this hearing, which was September 25, 2012.

As the Tenant did not vacate the rental unit on August 01, 2012, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for

the period between August 02, 2012 and August 31, 2012, I find that the Landlord has been fully compensated for that period.

I also find that the Tenant must compensate the Landlord for the 25 days in September that the Tenant remained in possession of the rental unit, at a daily rate of \$22.33, which equates to \$558.25.

I find that the Tenant fundamentally breached the tenancy agreement when he did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the Tenant did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit made it difficult for the Landlord to find new tenants for the remaining 5 days in September. I therefore find that the Tenant must compensate the Landlord for the loss of revenue experienced between September 26, 2012 and September 30, 2012, which was \$111.75.

Section 7(2) of the *Act* stipulates that a landlord who claims compensation for loss resulting from a tenant's failure to comply with the *Act* must do whatever is reasonable to minimize the loss. In my view, when a landlord is claiming compensation for lost revenue the Landlord must establish that it made reasonable efforts to re-rent the unit. As the Landlord was able to provide details regarding any attempts that may have been made to rent the unit for October 01, 2012, I dismiss the Landlord's claim for lost revenue from October.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant was obligated to pay for utility charges incurred during this tenancy. I find that the Landlord submitted insufficient evidence to establish those costs. In reaching this conclusion I was heavily influenced by the fact the Landlord was unable to state the precise utility costs and the Landlord submitted no documentary evidence, such as utility bills, to support this claim. I therefore dismiss the Landlord's claim for unpaid utilities.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$2,146.00, which is comprised of \$2,096.00 in unpaid rent/loss of revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$200.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,946.00. In the event that the Tenant does not comply with this Order, it may be

served on the Tenant, filed with the Province of British Columbia Small Claims Court 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 03, 2012.

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Residential Tenancy Branch