



# 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 dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord to obtain an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The agent testified that the tenant was served the Notice of Hearing on November 17, 2012 by registered mail. The agent provided a tracking number orally during the hearing. Based on the undisputed testimony of the agent, I find the tenant was served in accordance with the *Act* on the 5<sup>th</sup> day after the registered mailing date, pursuant to section 90 of the *Act*.

### Preliminary and Procedural Matters

During the hearing, the agent requested to add the owner of the rental unit, LS, to the application for dispute resolution. Therefore, the owner of the rental unit, LS, was added to the application as this does not prejudice the tenant.

The agent stated that since filing their application, the tenant has paid \$680.00 of the \$950.00 November 2012 rent, resulting in a balance owing for November 2012 in the amount of \$270.00. The agent testified that the tenant has also failed to pay December 2012 rent since filing their application. The agent withdrew their request for the NSF fees as they did not have evidence of those fees, and as a result, requested to amend their claim from \$1,050.00 to \$1,220.00 comprised of \$270.00 rent owing for November 2012 and \$950.00 owing for December 2012 as the tenant continues to occupy the rental unit. I allow the tenant to amend their monetary request to \$1,220.00 as it is

reasonable that the tenant would be aware that rent is due in accordance with the tenancy agreement and given that the tenant continues to occupy the rental unit.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*?

### Background and Evidence

The agent testified that the original tenancy agreement began on January 3, 2002. Monthly rent in the amount of \$950.00 was due on the 1<sup>st</sup> day of each month. A security deposit of \$475.00 was paid by the tenant at the start of the tenancy. A new tenancy agreement was signed by the consent of the parties effective January 31, 2011 for a fixed term ending on December 31, 2013. Monthly rent was not increased during the tenancy.

The agent confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice"), by posting on the tenant's door on November 7, 2012. The landlord submitted the 10 Day Notice in evidence. Pursuant to section 90 of the *Act*, the tenant was deemed served 3 days later on November 10, 2012. The effective vacancy date on the 10 Day Notice is listed as November 12, 2012 which automatically corrects under the *Act* to November 20, 2012.

The agents testified that \$270.00 in rent remains owing for November 2012, and \$950.00 is owing for December 2012 rent. The agent is seeking an order of possession as soon as possible.

### Analysis

**Order of Possession** - I find that the tenant failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ends on the corrected effective date of the 10 Day Notice. Accordingly, **I grant** the landlord an order of possession. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

**Claim for unpaid rent** – The agent testified that \$270.00 remains unpaid for November 2012 rent, and \$950.00 is owing for December 2012 rent. Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenant continues to occupy the unit. The landlord will not regain possession of the unit until after service of the order of possession and has therefore suffered a loss.

I find the landlord has met the burden of proof and has established a monetary claim of **\$1,220.00** comprised of \$270.00 in unpaid rent for November 2012 and \$950.00 for December 2012 unpaid rent.

As the landlord has succeeded with their application, I **grant** the landlord the recovery of the **\$50.00** filing fee.

The tenant's security deposit of \$475.00 has accrued \$16.80 in interest since January 3, 2002. The landlord continues to hold the total security deposit of \$491.80 which includes accrued interest.

**Monetary Order** – I find that the landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus interest as follows:

|                                      |                   |
|--------------------------------------|-------------------|
| Unpaid portion of November 2012 rent | \$270.00          |
| Unpaid December 2012 rent            | \$950.00          |
| Filing fee                           | \$50.00           |
| <b>Subtotal</b>                      | <b>\$1,270.00</b> |
| Less Security Deposit with interest  | (\$491.80)        |
| <b>TOTAL OWING TO LANDLORD</b>       | <b>\$778.20</b>   |

### Conclusion

I find that the landlord has proven his claim and is, therefore, entitled to an order of possession effective **two days** after service upon the tenant. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of \$1,270.00. I authorize the landlord to retain the full security deposit and interest of \$491.80 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for

the balance due of **\$778.20**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 18, 2012

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Residential Tenancy Branch