



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act or tenancy agreement, for damage to the unit site or property, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on October 30, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is there damage or loss and if so how much?
5. Is the Landlord entitled to compensation for loss or damage and if so how much?
6. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on April 1, 2012 as a 1 year fixed term tenancy with an expiry date of March 31, 2013. Rent is \$999.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$499.00 on March 15, 2012. The Landlord said the Tenant was given a rent incentive of \$200.00 when the Tenant signed the tenancy agreement and in the tenancy agreement it states the rent incentive must be paid back if the Tenant breaches the tenancy agreement. The Landlord requested the return of the rent incentive of \$200.00.

The Landlord said that the Tenant did not pay \$999.00 of rent and \$20.00 for parking for October, 2012 when it was due and as a result, on October 8, 2012 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 8, 2012 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent and parking for November and December, 2012 in the amount of \$999.00 for each month of rent and \$20.00 for each month of parking.

The Landlord further indicated that he is unsure if the Tenant is living at the rental unit as the Tenant changed the locks and he is unable to enter the unit. The Landlord requested an Order of Possession for as soon as possible.

The Landlord also sought to recover a \$25.00 late payment fee that is written into the Tenancy agreement for October, November and December, 2012 and the Landlord requested to recover the \$50.00 filing fee for this proceeding.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on October 11, 2012. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than October 16, 2012.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent and parking for October, 2012 and November, 2012, in the amount of \$2,038.00. I further find that the Landlord is entitled to recover a loss of rental income to December 15, 2012, in the amount of \$499.50 (\$999.00 X 1/2 of December, 2012 rent amount). The Landlord has an obligation to mitigate his damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible. I further find that the Landlord is entitled to recover the late charge of \$25.00 for each month of October and November, 2012.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

|       |                        |            |            |
|-------|------------------------|------------|------------|
|       | Rent arrears:          | \$1,998.00 |            |
|       | Loss of Rental Income: | \$ 499.50  |            |
|       | Recover rent incentive | \$ 200.00  |            |
|       | Parking arrears        | \$ 40.00   |            |
|       | Late payment fees(2)   | \$ 50.00   |            |
|       | Recover filing fee     | \$ 50.00   |            |
|       | Subtotal:              |            | \$2,837.50 |
| Less: | Security Deposit       | \$499.00   |            |
|       | Subtotal:              |            | \$ 499.00  |
|       | Balance Owing          |            | \$2,338.50 |

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$2,338.50 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

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Residential Tenancy Branch