



# 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, 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. It is apparent from information in the Application for Dispute Resolution that the Landlord is also seeking lost revenue from the month of January of 2013, so the Application has been amended to include an application for a monetary Order for money owed or compensation for damage or loss.

The Agent for the Landlord stated that she personally served the Tenant with copies of the Application for Dispute Resolution and Notice of Hearing on December 12, 2012. 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 the Tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent/loss of revenue; 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, 55, 67, and 72 of the *Act*?

### Background and Evidence

The Agent for the Landlord stated that this tenancy began on September 01, 2012; that the Tenant is required to pay monthly rent of \$1,150.00 by the first day of each month; that the Tenant paid a security deposit of \$575.00 and a pet damage deposit of \$125.00; that the Tenant still owes \$300.00 in rent for November of 2012; and that no rent has been paid for December of 2012 or January of 2013.

The Agent for the Landlord stated that on December 02, 2012 she personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of December 12, 2012. The Notice declared that the Tenant owed \$1,450.00 in rent that was due on December 01, 2012.

### Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,150.00 by the first day of each month; and that the Tenant still owes \$300.00 in rent for November of 2012 and \$1,150.00 in rent for December of 2012. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,450.00 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 undisputed evidence, I find that the Tenant was personally served with a Notice to End Tenancy on December 02, 2012, which directed the Tenant to vacate the rental unit by December 12, 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 has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit on December 12, 2012, I find that she is obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. As she has already been ordered to pay rent for the period between December 13, 2012 and December 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 15 days in January that she has remained in possession of the rental unit, at a daily rate of \$37.10, which equates to \$556.50.

I find that the Tenant fundamentally breached the tenancy agreement when she did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when she did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that her continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for the remainder of January. I therefore find that the Tenant must compensate the Landlord for the loss of revenue experienced for the remainder of January, which is anticipated to be \$593.50.

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 grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$2,650.00, which is comprised of \$2,006.50 in unpaid rent; \$593.50 in lost revenue, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retaining the Tenant's security deposit and pet damage deposit, in the amount of \$700.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,950.00. 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: January 15, 2013

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Residential Tenancy Branch

