



# 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 matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, 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 she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on December 18, 2012 as well as dropping the package in the Tenant's mail box. 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 with both parties present.

### 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 the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on February 3, 2009 as a month to month tenancy. Rent is \$1030.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$487.50 on January 29, 2009.

The Landlord said that the Tenant did not pay \$196.68 of rent for November, 2012 and \$530.01 of unpaid rent for December, 2012 when it was due and as a result, on December 18, 2012 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 18, 2012 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for January, 2013 of \$1030.00 as well.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested an Order of Possession for as soon as possible.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

The Tenant's support person M.D. said they paid the rent and only owed for the January, 2013 rent of \$1,030.00. The Tenant's support person said they paid \$333.33 and \$166.66 in December, 2012. The Tenant continued to say they also paid \$168.00 to the Landlord, but the Landlord returned it to them. The Tenant and the support person M.D. did not have any evidence that any additional rent payments were made and did not proof the full rent for December, 2012 was paid.

The Landlord said they had received the payments for \$333.33 and \$166.66 and have deducted those payments from the amount of unpaid rent. Receipts for those payments were made as "for use and occupancy only". The Landlord said they did return the last payment of \$168.00 to the Tenants as it was made just before the hearing and the Landlord thought the Tenant may need it to pay a security deposit if this tenancy ends.

### 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 November 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 November 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 for November, 2012, in the amount of \$196.68, December, 2012 unpaid rent of \$530.01 and unpaid rent for January, 2013 in the amount of \$1,030.00 for a total of unpaid rent of \$1,756.69.

As the Landlord has been successful in this matter, she 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:	\$1,756.69	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,806.69
Less:	Security Deposit	\$487.50	
	Subtotal:		\$ 487.50
	Balance Owing		\$1,319.19

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,319.19 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*.

Dated: January 21, 2013

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Residential Tenancy Branch

