



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, MNR, FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order pursuant to Section 67;
2. An Order of Possession pursuant to Section 55; and
3. An Order to recover the filing fee pursuant to Section 72.

I accept the landlord's evidence that the tenant was properly served with the Notice to End Tenancy by way of registered mail.

I accept the landlord's evidence that the tenant was properly served with the Application for Dispute Resolution including the Notice of Hearing and the landlord's evidence by way of registered mail which was not picked up by the tenant.

Both parties were given a full opportunity to be heard, to present evidence and to make submissions. Neither party requested an adjournment or a Summons to Testify.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

### **Issue(s) to be Decided**

Whether the landlord has cause to end this tenancy and receive an Order of Possession and whether the landlord is entitled to monetary order for unpaid rent and recovery of the filing fee.

## **Background and Findings**

### **Order of Possession**

Based on the undisputed evidence of the landlord I find that the landlord is entitled to an Order for Possession because there is outstanding rent. The tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice.

### **Monetary Order**

#### ***Rental Arrears***

Based on the undisputed evidence of the landlord I find that the landlord has met the burden of proving that there are rental arrears. I find the landlord is entitled to recovery of those arrears. I will award the landlord a monetary order for rental arrears in the sum of \$3,600.00 representing rent of \$1,200.00 per month for each of November, December 2012 and January 2013.

#### ***Fees***

The landlord testified that the tenant has now vacated the rental unit although she has not returned the keys. The landlord testified that the tenant agreed to pay move-in and move-out fees as required by the Strata Corporation therefore the landlord is also claiming the \$200.00 move out fee in addition to the rental arrears. Based on the undisputed evidence of the landlord I find this to be appropriate.

#### ***Security Deposit***

While the landlord has not made application seeking to retain the security deposit Section 72 of the *Residential Tenancy Act* states as follows:

#### **Director's orders: fees and monetary orders**

- 72** (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.
- (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

In accordance with Section 72(2)(b) I will allow the landlord to retain the security deposit and I will offset that deposit from the monetary award made herein.

***Filing Fees***

As the landlord has been successful in this application I find that the landlord is entitled to recover the filing fees paid for this application.

**Calculation of Monetary Award in Favour of the Landlord**

Rental Arrears	\$3,600.00
Move-out fee	200.00
Filing Fees for the cost of this application	50.00
Less Security Deposit (no interest accrued)	-600.00
Total Monetary Award	\$3,250.00

**Conclusion**

The landlord is provided with a formal copy of an order of possession. This is a final and binding Order enforceable as any Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. This is a final and binding Order enforceable as any Order of the Provincial 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 08, 2013.

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Residential Tenancy Branch

