



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CLADERA PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **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 January 25, 2013. 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 the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on March 1, 2012 as a fixed term tenancy with an expiry date of August 31, 2012 and then renewed on a month to month basis. Rent is \$755.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$377.50 in advance of the tenancy.

The Landlord said that the Tenant did not pay \$755.00 of rent for January, 2013 when it was due and as a result, on January 3, 2013 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 3, 2013 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for February, 2013 of \$755.00 as well.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord does not know the Tenant's plans. The Landlord requested an Order of Possession for as soon as possible if their application is successful.

The Landlord also requested to retain the Tenant's security deposit of \$377.50 as partial payment of the unpaid rent and 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 January 6, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than January 11, 2013.

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 January, 2013, in the amount of \$755.00 and unpaid rent for February, 2013 in the amount of \$755.00.

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:	\$1,510.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,560.00
Less:	Security Deposit	\$377.50	
	Subtotal:		\$ 377.50
	Balance Owing		\$1,182.50

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,182.50 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*.

Dated: February 18, 2013

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Residential Tenancy Branch

