



# 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 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 personal service on December 7, 2012.

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 sent January 15, 2013

The tenant did not appear. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

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. 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***

The landlord submitted a "Lease for Use with Option Contract" entered into between the parties on May 15, 2012. The contract states that the tenancy was a fixed term of 24 months and rent was fixed at \$2,200.00 per month payable on the first of the month. The landlord says that the intent of the contract was to allow the tenant an option to purchase the rental unit. The landlord testified that the tenant paid a security deposit of \$1,800.00. The landlord says the deposit was higher than the allowed one half of a month's rent (\$1,100.00) because \$700.00 was to go towards the down payment. The landlord then testified that although the accounting records he provided entitled "Monthly Income Record" show that the tenant paid a damage deposit of \$1,500.00 and a pet deposit of \$500.00 that neither deposit was actually received. The landlord submits that these sums are recorded as sums to be received. The landlord submitted he did not know whether he could claim the deposits now as he is not familiar with this process.

The landlord gave the following accounting of rents owed and payments made:

<b>Date</b>	<b>Rent Due</b>	<b>Rent Paid</b>	<b>Amount Owning</b>
May 15	\$2,200.00		0.00
May 17		\$1,000.00	1,200.00
May 25		1,200.00	0.00
June 1	2,200.00		2,200.00
June 1		1,000.00	1,200.00
June 6		1,000.00	200.00
July 1	2,200.00		2,400.00
August 1	2,200.00		4,600.00
August 15		700.00	3,900.00
September 1	2,200.00		6,100.00

Date	Rent Due	Rent Paid	Amount Owning
September 4		600.00	5,500.00
September 5		600.00	4,900.00
September 27		800.00	4,100.00
October 1	2,200.00		6,300.00
October 26		800.00	5,500.00
November 1	2,200.00		7,700.00
November 1		1,000.00	6,700.00
November 20		1,200.00	5,500.00
November 30		300.00	5,200.00
December 1	2,200.00		7,400.00
December 23		780.00	6,620.00
December 28		800.00	5,820.00
January 2013	2,200.00		8,020.00
February	2,200.00		\$10,220.00

The landlord submitted that he indicated on the 10 day Notice to End Tenancy issued in this matter that \$2,200.00 was owing as at December 7, 2012 even though \$7,400.00 was owing because he believed the Notice could only include rent for the month it was issued. The landlord has claimed \$10,220.00 in rental arrears in his Application for Dispute Resolution.

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 \$10,220.00 as set out above.

### ***Security Deposit***

Although the landlord has claimed the security deposit in his application he has testified that no such deposit was paid. I will accept his undisputed evidence and dismiss his claim to retain the security deposit.

### ***Filing Fees***

The landlord did not request recovery of the filing fee therefore no award has been made.

**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: February 05, 2013

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Residential Tenancy Branch

