



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

OPR, MNR, 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, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The female Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to each Tenant at the rental unit, via registered mail, on February 21, 2013. The female Agent for the Landlord cited Canada Post tracking numbers that corroborate this statement. 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 neither Tenant appeared at the hearing.

### Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Act*?

### Background and Evidence

The female Agent for the Landlord stated that this tenancy began on August 01, 2012; that the Tenants signed a tenancy agreement that required them to pay monthly rent of \$1,125.00 by the first day of each month; and that the Tenant was only required to pay monthly rent of \$562.50 for October of 2012, November of 2012, December of 2012, and January of 2013, as the male Tenant was employed by the Landlord during those months.

The female Agent for the Landlord stated that the Tenant only paid \$545.50 for rent in October of 2012; that the Tenant paid nothing for rent for November of 2012; that the Tenant paid \$562.50 for rent in December of 2012; and that the Tenant has paid no rent for 2013.

The Agent for the Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of February 14, 2013, at the rental unit on February 04, 2013, in the presence of the male Agent for the Landlord. The Notice declared that the Tenant owed \$2,262.50 in rent that was due on February 01, 2013.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,125.00 by the first day of each month. I find that the monthly rent was reduced to \$562.50 in October of 2012, November of 2012, December of 2012, and January of 2013, in exchange for services provided by the Tenant.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid \$17.00 of the rent that was due for October of 2012, \$562.50 of the rent that was due for November of 2012, \$562.50 of the rent that was due for January of 2013, and \$1,125.00 of the rent that was due for February of 2013. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,267.00 in outstanding rent to the Landlord.

I note that the rental arrears noted on the Application for Dispute Resolution differ from the amounts the Agent for the Landlord testified are outstanding. I accept the testimony of the Agent for the Landlord over the information on the Application, as the Agent had the opportunity to confirm the amounts provided with documents she had in her possession at the time of the hearing.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. In the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy was posted at the rental unit on February 04, 2013, which directed the Tenant to vacate the rental unit by February 14, 2013, pursuant to section 46 of the *Act*.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on February 07, 2013.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to

have received this Notice on February 07, 2013, I find that the earliest effective date of the Notice was February 17, 2013.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was February 17, 2013.

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 February 17, 2013, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between February 17, 2013 and February 28, 2013, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the 18 days in March that the Tenant remained in possession of the rental unit, at a daily rate of \$36.29, which equates to \$653.22.

I am unable to award compensation for the remainder of March, as I cannot be certain that the Tenant will not vacate the rental unit today and the Landlord did not seek compensation for money owed or compensation for damage or loss.

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 hereby 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 \$2,970.22, which is comprised of \$2,920.22 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$2,970.22. 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: March 18, 2013

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Residential Tenancy Branch

