



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, MNSD, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### **Preliminary Matters**

At the start of the hearing the landlord asked to amend the application to include a claim for unpaid March 2013 rent in the sum of \$950.00; as the tenant was present and confirmed rent has not been paid, the application was amended.

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

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on October 25, 2010; the parties agreed that rent is \$950.00 due on the first day of each month. A deposit in the sum of \$475.00 was paid. A copy of the signed tenancy agreement was supplied as evidence.

The landlord stated that on January 11, 2013 a 10 Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 21, 2013 was served by placing it under the tenant's door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,850.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant said she did not receive a Notice placed under her door, but that she had seen the Notice issued to her in December 2012. The tenant confirmed receipt of the landlord's application and evidence which she accepted by signing for registered mail on February 15, 2013. The tenant also did not dispute that the evidence she received contained the Notice and that she has not paid rent since October 2012 and that she did not dispute the Notice.

The landlord has claimed compensation in the sum of \$4,750.00 for unpaid rent from November 2012 to March, 2013, inclusive.

### Analysis

The tenant confirmed receipt of the landlord's evidence package when she signed accepting registered mail on February 15, 2013. I find, pursuant to section 71(2)(b) of the Act, that effective February 15, 2013 the tenant was sufficiently served with the 10 Day Notice to End Tenancy for Unpaid Rent that was contained in the evidence package given to the tenant.

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 25, 2013.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on February 25, 2013, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for

Dispute Resolution to dispute the Notice. The tenant has confirmed that she did not exercise either of these rights, therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of possession that is effective two days after the order is served to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$4,750.00 from November 2012 to March 2013 inclusive, and that the landlord is entitled to compensation in that amount. The tenant has acknowledged she has not paid rent owed since October 2012.

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.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$475.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order in the sum of \$4,325.00. 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

The landlord has been granted an Order of possession that is effective 2 days after the Notice is served to 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.

### Conclusion

The landlord is entitled to an Order of possession.

The landlord is entitled to a monetary Order for unpaid rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 07, 2013

