



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on March 6, 2013, by registered mail. A second package was sent with additional evidence on March 25, 2013. Canada Post tracking information was provided in the Landlord's testimony (RW720600008CA and RW755632876CA). Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act and I proceeded in the Tenant's absence.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the 10 Day Notice to end tenancy for unpaid rent; a proof of service form; a monetary order worksheet; the tenancy agreement; and the move-in inspection report form.

The Landlord stated that the Tenant entered into a fixed term tenancy agreement that began on January 18, 2013, and is set to end on January 31, 2014. The Tenant was required to pay her \$1,400.00 on January 18, 2013 which was to include \$700.00 for the

security deposit plus \$700.00 for January 2013 rent. The Tenant only had \$700.00 so the parties agreed that the Tenant would pay the \$700.00 as the security deposit and the January 2013 rent would be paid later in two installments: \$350.00 on January 23, 2013 and \$350.00 on February 2013.

The Landlord testified that when the Tenant failed to pay the full amount of rent that was due on February 1, 2013, they personally served her with a 10 Day Notice to end tenancy on February 22, 2013. The Landlord submitted a proof of service document which the Tenant signed acknowledging receipt of the 10 Day Notice.

The Landlord advised that a neighbor had heard the Tenant packing last night; however, the Tenant still has possession of the rental unit. The Landlord is seeking an Order of Possession for as soon as possible and all the unpaid rent for January, February, March and loss of rent for April 2013.

### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on February 22, 2013, and the effective date of the Notice is **March 4, 2013**, in accordance with section 90 of the Act. The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$3,500.00 which consists of \$700.00 for January 2013, \$1,400.00 for February 2013, and \$1,400.00 for March 2013. The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent up to March 31, 2013, of **\$3,500.00**.

As noted above this tenancy ended **March 4, 2013**, in accordance with the 10 Day Notice. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. That being said, the Landlord has the obligation to re-rent the unit as soon as possible. Therefore, I find the Landlord is entitled to use and occupancy

and any loss of rent for half the month up to April 15, 2013, in the amount of **\$700.00**. The Landlord is at liberty to make a future application if they suffer additional loss as a result of this tenancy ending.

The Landlord has been successful with their application; therefore, I award recovery of their **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid rent (Jan. Feb. Mar. 2013)	\$3,500.00
Use & Occupancy & Loss of rent up to Apr. 15, 2013	700.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$4,250.00
<b>LESS:</b> Security Deposit \$700.00 + Interest 0.00	<u>-700.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$3,550.00</u></b>

#### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$3,550.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: April 02, 2013

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Residential Tenancy Branch

