



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:41 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on March 6, 2013 and a second 10 Day Notice for the amount owing as of April 1, 2013 on April 2, 2013. His wife gave sworn testimony that she witnessed her husband hand the tenant both of the above 10 Day Notices. The landlord testified that he handed the tenant a copy of his dispute resolution hearing package on March 18, 2013. His wife testified that she witnessed him hand this package to the tenant on March 18, 2013. The landlord also entered into written evidence a copy of a proof of service document signed by the tenant, the landlord and the landlord's spouse, confirming that the landlord handed the tenant the dispute resolution hearing package on March 18, 2013. I am satisfied that the landlord served all of the above documents to the tenant in accordance with the *Act*.

At the beginning of this hearing, the landlord testified that the tenant gave him \$400.00 on April 9, 2013 to apply against the amount he owed the landlord. The landlord asked that this \$400.00 payment be deducted from the \$1,720.00 amount of his application for a monetary award. As requested, the landlord's application for a monetary award is reduced to \$1,320.00, the amount currently owing for this tenancy.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy began on February 2, 2013. Monthly rent is set at \$860.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$430.00 security deposit, paid in part on January 13, 2013 and the remainder before the tenant occupied the rental unit.

The landlord testified that he received the tenant's rental payment for February 2013, but since then has only received one \$400.00 payment towards this tenancy. The landlord entered into written evidence a copy of the Residential Tenancy Agreement and the first 10 Day Notice issued on March 6, 2013.

Analysis

There is undisputed evidence that the tenant failed to pay all of the \$860.00 identified as owing in the 10 Day Notice of March 6, 2013 within five days of receiving that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the first 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by March 16, 2013. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that the landlord is entitled to a monetary award of \$460.00 for rent owing from March 2013 and \$860.00 for rent owing from April 2013.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover his filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and his filing fee and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid Portion of March 2013 Rent (\$860.00 - \$400.00 = \$460.00)	\$460.00
Unpaid April 2013 Rent	860.00
Less Security Deposit	-430.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$940.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 12, 2013

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Residential Tenancy Branch