



# 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 was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, 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.

The landlord provided affirmed testimony that on March 30, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. The landlord has a Canada Post tracking number. During the hearing the landlord confirmed that the Canada Post tracking web site showed that the mail had been accepted on April 3, 2013.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matters

The landlord named the tenant and a female, who is indicated as an occupant, on the tenancy agreement that was signed. Therefore, as the female respondent is not a tenant, any Orders issued will not name that occupant.

### 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 February 1, 2013, rent was \$1,900.00 per month, due on or before the first day of each month. A deposit in the sum of \$950.00 was paid. Only the male respondent signed the tenancy agreement that was supplied as evidence; the female respondent was shown as an occupant.

The landlord stated that on March 19, 2013 a Ten Day Notice to End Tenancy for Unpaid Rent with an effective date of April 8, 2013 was sent to the tenant via registered mail. The landlord supplied a copy of the Canada Post tracking delivery record showing that the tenant signed accepting the mail on March 20, 2013.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,900.00 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 did not pay March or April 2013 rent; the landlord has claimed compensation in the sum of \$3,800.00. A copy of a NSF cheque issued by the occupant on March 4, 2013, was supplied as evidence of non-payment of rent by the tenant.

The tenant remains in the rental unit.

### Analysis

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 April 8, 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. In the circumstances before me I have no evidence that the tenant exercised 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 2 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 \$3,800.00 for March and April 2013, and that the landlord is entitled to compensation in that amount.

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 \$950.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order in the sum of \$2,900.00. 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 **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.

#### Conclusion

The landlord is entitled to an Order of possession and 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: April 26, 2013

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Residential Tenancy Branch

