



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC ASSET MANAGEMENT CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, parking, loss of rent and NSF fees; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order in the amount claimed?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The tenancy commenced April 1, 2012 and the tenant paid a security deposit of \$492.50. The tenant was required to pay rent of \$985.00 per month plus \$50.00 for parking. The tenancy agreement also provides an arrears clause indicating a fee of \$35.00 will be charged for returned cheques.

The tenant's rent cheque for February 2013 and March 2013 were returned for insufficient funds. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on March 8, 2013 with an effective date of March 21, 2013, indicating rent of \$2,140.00 was outstanding. The landlord submitted that the Notice was posted on the tenant's door on March 8, 2013 whereas the tenant submitted that he received it on or about March 13, 2013.

The landlord explained that the amount indicated on the Notice includes rent, parking and NSF fees for two months. After the Notice was received the tenant did not pay the

outstanding rent or file to dispute the Notice. The tenant continues to occupy the rental unit.

The landlord is seeking to recover unpaid and loss of rent and parking for the months of February, March, and April 2013. The landlord requested an Order of Possession effective as soon as possible.

The tenant submitted that failure to pay rent was due to inability to collect monies owed to him but that he is actively working on collecting the funds in order to pay the landlord.

### Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. The inability to pay rent is not a basis for withholding or otherwise not paying rent. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord posted a 10 Day Notice to end the tenancy and that the tenant received it on or about March 13, 2013. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy legally ended 10 days later on March 23, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent and parking for the months of February and March 2013. I also award the landlord loss of rent and parking for the month of April 2013 since the tenant has continued to use and occupy the rental unit in April 2013.

The landlord did not request recovery of NSF fees but the landlord was cautioned that an administrative charge for NSF cheques that exceed \$25.00 is non-compliant with the Residential Tenancy Regulations.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord. The key deposit paid by the tenant continues to be held in trust pending return of the keys by the tenant.

I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid rent and parking: February and March 2013	\$ 2,070.00
Loss of rent and parking: April 2013	1,035.00
Filing fee	50.00
Less: security deposit	<u>(492.50)</u>
Monetary Order	\$ 2,662.50

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,662.50 to serve upon the tenant.

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 17, 2013

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Residential Tenancy Branch

