



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0915852 BC Ltd. (dba: Symbiosis Pediatric Therapy Inc.)  
and [tenant name suppressed to protect privacy]

## **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, a monetary order for unpaid rent, a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, authorization to keep all or part of a security deposit, and to recover the cost of the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The landlord testified that the Notice was served on the tenant by registered mail on May 7, 2013. The landlord provided a registered mail receipt with tracking number as evidence and confirmed that the name and address matched the name of the tenant and the address of the rental unit, and that the tenant continues to occupy the rental unit. Documents sent by registered mail are deemed served five days after mailing under the *Act*. The landlord stated that the registered mail was returned as unclaimed. I find the tenant was duly served on the fifth day after mailing on May 12, 2013, in accordance with the *Act*.

### Preliminary and Procedural Matters

The landlord testified that the rent for May 2013 has also not been paid since filing his application. As a result, the landlord requested to amend the application to include rent owed for May 2013. The landlord confirmed that the tenant continues to occupy the rental unit. As this request to amend the application does not prejudice the respondent tenant as the tenant would be aware that rent is due pursuant to the tenancy

agreement, and continues to occupy the rental unit, I amend the application to \$5,800.00 which includes unpaid rent for May 2013 in the amount of \$1,450.00 plus the original unpaid rent claim for February 2013 of \$1,450.00, March 2013 of \$1,450.00 and April 2013 of \$1,450.00.

In addition, the landlord withdrew the \$200.00 moving expenses described under “other” in his application during the hearing. The landlord also requested to amend his application to include the “doing business as” (dba) name of the landlord company which was amended at the landlord’s request.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

The landlord affirmed that a fixed term tenancy agreement began on June 1, 2012 and is scheduled to revert to a month to month tenancy after May 31, 2013. Monthly rent in the amount of \$1,450.00 is due on the first day of each month. The tenant paid a security deposit of \$725.00 at the start of the tenancy, which the landlord continues to hold.

The landlord confirmed service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated April 22, 2013 by his wife posting the 10 Day Notice on the tenant’s door on April 22, 2013 at 6:00 p.m., which the landlord witnessed. The landlord submitted a proof of service document in evidence which supports the landlord’s testimony. The 10 Day Notice indicates that \$4,550.00 in unpaid rent was due on April 1, 2013. The 10 Day Notice indicates an effective vacancy date of May 4, 2013. The landlord stated that tenant has also failed to pay rent for May 2013 in the amount of \$1,450.00 since the landlord filed their application on May 6, 2013.

The landlord is seeking a monetary order for unpaid rent and authorization to retain the tenant’s security deposit towards the unpaid rent owing.

The landlord provided copies of the written tenancy agreement, 10 Day Notice, a registered mail receipt, tenancy agreement addendum, and a proof of service document in evidence for this proceeding.

### Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of Possession** - I find that the tenant failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ends on the corrected effective date of the Notice. The 10 Day Notice indicates an effective vacancy date of May 4, 2013 which automatically corrects under the *Act*, to May 5, 2013. The tenant continues to occupy the rental unit. Accordingly, I grant the landlord an order of possession effective 2 days after service on the tenant.

**Claim for unpaid rent** – The landlord testified that the tenant has failed to pay any rent for the months of February 2013, March 2013, April 2013 and May 2013 in the amount of \$1,450.00 per month for a total of 5,800.00 in unpaid rent. Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. As the tenant continues to occupy the rental unit, the landlord will not regain possession of the unit until after service of the order of possession and has incurred a loss as a result. **I find** the landlord has met the burden of proof as a result. Therefore, **I find** the landlord has established a monetary claim of **\$5,800.00** for unpaid rent of \$1,450.00 for the four months of February 2013, March 2013, April 2013 and May 2013.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$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 which has accrued \$0.00 in interest as follows:

Unpaid February 2013 rent	\$1,450.00
Unpaid March 2013 rent	\$1,450.00
Unpaid April 2013 rent	\$1,450.00
Unpaid May 2013 rent	\$1,450.00
Filing fee	\$50.00
<b>Subtotal</b>	<b>\$5,850.00</b>
<i>(Less Tenant's Security Deposit of \$725.00)</i>	<i>-\$725.00</i>
<b>TOTAL AMOUNT OWED TO THE LANDLORD</b>	<b>\$5,125.00</b>

Conclusion

I find that the landlord has proven their claim and is, therefore, entitled to an order of possession effective two days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find that the landlord has established a total monetary claim of \$5,850.00 as indicated above. I authorize the landlord to retain the tenant's full security deposit of \$725.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of \$5,125.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: May 30, 2013

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Residential Tenancy Branch