



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR / OPC, MNR, MNSD, FF  
OPC

### Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession for unpaid rent / an order of possession for cause / a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for cancellation of a 1 month notice to end tenancy for cause.

Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began on December 1, 2012. There is no dispute that monthly rent is due and payable in advance on the first day of each month. However, the landlord claims that rent is \$525.00, while the tenant claims that rent is \$500.00. Further, the landlord claims there is no written tenancy agreement, while the tenant claims there is. There is no dispute that in addition to rent, the tenant is responsible for a monthly payment of \$40.00 for utilities. A security deposit of \$262.50 was collected near the start of tenancy.

The landlord issued a 1 month notice to end tenancy for cause dated May 1, 2013. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is June 1, 2013. The reason identified on the notice in support of its issuance is as follows:

Tenant is repeatedly late paying rent

The tenant filed an application to dispute the notice on May 7, 2013.

Arising from rent which remained unpaid when due on May 1, 2013 in the amount of \$285.00, the landlord issued a 10 day notice to end tenancy for unpaid rent dated May 2, 2013. It appears that this notice was also served in-person on May 1, 2013. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is May 12, 2013. Subsequently, the tenant has made no further payment toward rent and he continues to reside in the unit. Further, the tenant has not filed an application to dispute the 10 day notice.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated May 2, 2013. The tenant did not pay the outstanding rent within 5 days of receiving the notice, and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord has established entitlement to an **order of possession**.

In view of the above finding, I find there is no requirement that I consider the landlord's application for an order of possession on the basis of the 1 month notice to end tenancy for cause.

As to the amount of monthly rent, I find on a balance of probabilities that it is \$525.00 as claimed by the landlord, and not \$500.00 as claimed by the tenant. I make this finding as the security deposit of \$262.50 is half of \$525.00. In this regard, section 19 of the Act addresses **Limits on amount of deposits**, and provides in part:

19(1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of ½ of one month's rent payable under the tenancy agreement.

It is typical for landlords to collect a security deposit which is ½ the equivalent of one month's rent under the tenancy agreement.

As for the monetary order, I find that the landlord has established entitlement to **\$335.00**, which is calculated as follows:

\$285.00: *unpaid rent for May*

\$50.00: *filing fee*

I order that the landlord retain the security deposit of **\$262.50**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$72.50** (\$335.00 - \$262.50).

### Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$72.50**. Should it be necessary, this order may be served on the tenant, filed in the 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: May 29, 2013

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Residential Tenancy Branch

