



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYWEST MANAGEMENT CORPORATION  
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 and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted documentary evidence which indicates the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on April 16, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding effective April 21, 2013, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenant's absence.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included among other things, copies of: the 10 Day Notice to end tenancy for unpaid rent issued April 2, 2013; the tenant payment ledger; and the tenancy agreement.

The Landlord confirmed the Tenant entered into a month to month tenancy that began on September 1, 1997 at \$500.00 per month. The current monthly rent is payable on the first of each month in the amount of \$710.00. On September 1, 1997 the Tenant paid \$250.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay the April 1, 2013 rent and accumulated unpaid balance she posted a 10 Day Notice to the Tenant's door on April 2, 2013, for \$711.00 in unpaid rent. The Tenant continues to occupy the rental unit and has made three payments towards April and May rent as follows: \$400.00 on April 4, 2013; \$275.00 on April 22, 2013; and \$510.00 paid on May 2, 2013.

The Landlord seeks to regain possession of the unit as soon as possible and to recover the accumulated unpaid rent up to May 31, 2013 in the amount of \$236.00. The Landlord is also seeking late payment charges for April and May at \$25.00 per month; as provided for in the tenancy agreement.

### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on April 5, 2013, three days after it was posted to her door, and the effective date of the Notice is **April 15, 2013**, in accordance with section 90 of the Act.

The Tenant did not pay the rent in full within the required five days and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Tenant has made three payments towards April rent as follows: \$400.00 on April 4, 2013; \$275.00 on April 22, 2013; and \$510.00 paid on May 2, 2013, totalling \$1,185.00. Therefore, I find the Tenant has paid the accumulated unpaid rent up to April 30, 2013, and has a credit balance of \$474.00 (\$1,185.00 - \$711.00). A payment for April 2013 rent has been made in full I dismiss the Landlord's request for a monetary order for April 2013.

Section 8 of the tenancy agreement provides for a \$20.00 late payment charge for all rent that is not paid when due on the first of each month, in accordance with section 7 of the *Residential Tenancy Regulation*. Accordingly, I award the Landlord late payment fees for April 2013 in the amount of **\$20.00**, as stipulated in the tenancy agreement, not \$25.00 as applied for.

The Landlord claimed unpaid rent of \$710.00 which was due May 1, 2013. As noted above this tenancy ended **April 15, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for May 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of May 2013, in the amount of **\$236.00** (\$710.00 less the credit balance of \$474.00).

The Landlord is seeking \$25.00 for late payment fees for May 13, 2013 in accordance with section 8 of the tenancy agreement that provides for \$20.00 late payment fees. This tenancy ended April 15, 2013, therefore the Landlord may not make a claim for late payment fees for May 2013, as this tenancy was no longer in effect at that time. Therefore I dismiss the Landlord's claim of \$25.00 for late fees for May 2013.

The Landlord has been successful with their application; therefore I award 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 plus interest as follows:

Use & Occupancy & Loss of Rent for May 2013	\$236.00
Late payment fee for April 2013	20.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$306.00
<b>LESS:</b> Security Deposit \$250.00 + Interest \$32.54	<u>-282.54</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 23.46</u></b>

### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$23.46**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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 13, 2013

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Residential Tenancy Branch