



# 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, compensation for damage or loss and damage to the unit 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 April 22, 2013 at 1 p.m. he personally served a copy of the Application for Dispute Resolution and Notice of Hearing to the tenant. Service occurred at the rental unit with a friend of the landlord present as a witness.

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

### Preliminary Matters

The landlord decided to proceed with the portion of the application requesting an Order of possession, compensation for unpaid rent, to retain the deposit and filing fee costs. The balance of the application was withdrawn.

### 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 security deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on April 4, 2011, effective June 2012 rent was \$1,135.00 per month, due on the 1<sup>st</sup> day of each month. A security deposit in the sum of \$550.00 and a pet deposit in the sum of \$250.00 was paid. A tenancy agreement was signed; a copy was not supplied as evidence.

The tenant vacated the unit on April 22, 2013; the Fire Department had deemed the unit unsafe as power had been shut off since January 2013.

The landlord stated that on April 6, 2013 a Ten Day Notice for Unpaid Rent was given to the tenant. Service occurred at 10 a.m. with a friend of the landlord present as a witness. A proof of service document was supplied as evidence of service.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,005.00 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 Notice effective date was April 16, 2013.

The landlord would receive a \$700.00 cheque from the government each month; this payment ceased in March. The tenant would then pay the balance of rent owed. No rent was paid in April and the tenant failed to pay \$435.00 in each February and March, 2013. The landlord has claimed compensation in the sum of \$2,005.00.

### 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 16, 2013, pursuant to section 46 of the Act. Regardless of any other reason the tenant may have vacated; I find that the Notice was effective on April 16, 2013.

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 it is served to the landlord.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$2,005.00 from February to April, 2013 inclusive and, pursuant to section 62 of the Act, 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 \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find, pursuant to section 72 of the Act, that the landlord is entitled to retain the tenant's security and pet deposits in the amount of \$800.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,255.00. 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 a monetary Order and an Order of possession.

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: May 17, 2013

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Residential Tenancy Branch

