



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenant's door on April 4, 2013. Although a second 10 Day Notice dated May 2, 2013, was also entered into written evidence, this was not completed using the proper Residential Tenancy Branch (RTB) form and is of no legal effect. The landlord testified that the original dispute resolution hearing package was sent to the tenant by registered mail on April 27, 2013. The landlord provided a copy of the Canada Post Tracking Number to confirm this service of the original hearing package. I am satisfied that the 10 Day Notice of April 4, 2013 and the original dispute resolution hearing package were served to the tenant in accordance with the *Act*.

The landlord was uncertain as to how the landlord's amended application for dispute resolution was served to the tenant. Based on a written statement on the front of that amended application, it would appear that the amended application increasing the requested amount of the monetary award from \$890.00 to \$1,780.00 was posted on the tenant's door on May 9, 2013.

At the hearing, I advised the landlord that I was not satisfied that the amended application was served to the tenant in accordance with the provisions of section 89(1) of the *Act* which govern the service of this type of document. However, as the landlord's request for an additional monetary award is for rent that has become owing since the landlord submitted the original application for dispute resolution, I allowed the

landlord to modify the amount of the requested monetary award to reflect this additional unpaid rent that has become owing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

This one-year fixed term tenancy commenced on August 1, 2012. Monthly rent is set at \$840.00, payable in advance on the first of each month, plus \$25.00 for parking. The landlord continues to hold the tenant's \$420.00 security deposit paid on or about July 31, 2012.

The landlord entered sworn testimony and written evidence that the tenant has not paid anything towards this tenancy since the 10 Day Notice of April 4, 2013 was issued. On April 4, 2013, the amount identified as owing was \$890.00, comprised of \$840.00 for rent, \$25.00 for parking, and a \$25.00 N.S.F. fee as per the terms of the parties Residential Tenancy Agreement, entered into evidence by the landlord. The landlord testified that another \$890.00 has become owing for May 2013, as the tenant has failed to make any further payments. She provided the same breakdown of this \$890.00 charge for May 2013, as outlined above for April 2013.

Analysis

The tenant failed to pay the April 2013 rent in full within five days of receiving the 10 Day Notice issued on April 4, 2013. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by April 17, 2013. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed evidence provided by the landlord, I find that the landlord is entitled to a monetary award of \$840.00 for each of April and May 2013 for unpaid rent, \$25.00 for parking for each of these months, and \$25.00 in N.S.F. charges for each of these months.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee from the tenant and to retain the tenant's security deposit:

Item	Amount
Unpaid April 2013 Rent, Parking and NSF Charge (\$890.00 = \$840.00 + \$25.00 + \$25.00)	\$890.00
Unpaid May 2013 Rent, Parking and NSF Charge (\$890.00 = \$840.00 + \$25.00 + \$25.00)	890.00
Less Security Deposit	-420.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,410.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 22, 2013

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Residential Tenancy Branch

