



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Third Estates Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

OPR, MNR, MNSD, FF

### **Introduction:**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the rental unit was vacated on May 20, 2013.

The Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant at the rental unit, via registered mail, on May 10, 2013. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

### **Issue(s) to be Decided:**

Is the Landlord entitled to a monetary Order for unpaid rent and to keep all or part of the security deposit?

### **Background and Evidence:**

The Agent for the Landlord stated that this tenancy began on April 15, 2011; that the Tenant is required to pay monthly rent of \$1,150.00 by the first day of each month; and that the Tenant paid a security deposit of \$575.00. The Landlord submitted a copy of a tenancy agreement that corroborates this testimony.

The Agent for the Landlord stated that the Tenant did not pay any rent for May of 2013 and that the Tenant still owes \$650.00 in rent for April of 2013.

The Agent for the Landlord stated that the building manager posted a Ten Day Notice to End Tenancy for Unpaid Rent at the rental unit on April 02, 2013, which had an effective date of April 12, 2013. The Notice declared that the Tenant owed \$1,150.00 in rent that was due on April 01, 2013. The Agent for the Landlord stated that the Tenant paid \$500.00 in rent on April 10, 2013.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,150.00 by the first day of each month and that the Tenant did not pay \$650.00 of the rent that was due for April of 2013. As the Tenant is required to pay rent when it is due, pursuant to section 26 of the *Act*, I find that the Tenant must pay \$650.00 in outstanding rent for April of 2013.

On the basis of the undisputed evidence, I find that a Ten Day Notice for Unpaid Rent was posted on the door of the rental unit on April 02, 2013, which has a declared effective date of April 12, 2013. As the Tenant did not dispute that Notice or pay the outstanding rent, I find that the tenancy ended on the effective date of the Notice, pursuant to section 46(5) of the *Act*.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant is deemed to have received the Notice to End Tenancy on April 05, 2013.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on April 05, 2013, I find that the earliest effective date of the Notice is April 15, 2013.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the true effective date of this Notice to End Tenancy was April 15, 2013.

As the Tenant did not vacate the rental unit on April 15, 2013, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between April 15, 2013 and April 30, 2013, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the 20 days in May that the Tenant remained in possession of the rental unit, at a daily rate of \$37.10, which equates to \$742.00.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,442.00, which is comprised of \$1,392.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit, in the amount of \$575.00, in partial satisfaction of the monetary claim. Based on these determinations I grant the Landlord a monetary Order for the balance of \$867.00. 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.

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: June 04, 2013

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Residential Tenancy Branch