



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet damage deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received the landlords' 10 Day Notice posted on her door on May 2, 2013. The tenant also confirmed that the female landlord (the landlord) handed her a copy of the landlords' dispute resolution hearing package on May 15, 2013. I am satisfied that the landlords served the above documents to the tenant in accordance with the *Act*.

The parties agreed that since the landlord issued the 10 Day Notice, the landlord accepted a \$250.00 payment from the tenant on June 5, 2013 for "use and occupancy only" and not to reinstate this tenancy. The landlord reduced the amount of the requested monetary award by \$250.00 to reflect the tenant's payment of June 5, 2013.

### Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to retain all or a portion of the tenant's security and pet damage deposits in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy began as a one-year fixed term tenancy on November 1, 2010. When the term expired, the tenancy continued as a periodic tenancy. Current monthly rent is set at \$975.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$487.50 security deposit and \$487.50 pet damage deposit, both paid on October 21, 2010.

The landlords issued the 10 Day Notice identifying \$975.00 in rent owing as of May 1, 2013. The landlords' original claim for a monetary award of \$1,650.00 (reduced by \$250.00 at this hearing) included a request for unpaid rent of \$975.00 for each of May 2013 and June 2013, late fees of \$25.00 for each of these months, and the recovery of the \$50.00 filing fee.

### Analysis

I do not find that the landlords' acceptance of the tenant's \$250.00 payment on June 5, 2013, for use and occupancy only reinstated this tenancy or set aside the landlords' 10 Day Notice. The tenant failed to pay the May 2013 rent within five days of receiving the 10 Day Notice. 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 her tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by May 15, 2013. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords 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 landlords may enforce this Order in the Supreme Court of British Columbia.

Based on the landlords' undisputed evidence, I find that the landlords are entitled to a monetary award of \$725.00 (i.e., \$975.00 - \$250.00 = \$725.00) for unpaid rent still owing from May 2013 and \$975.00 for unpaid rent owing for June 2013.

The landlords are also entitled to a monetary award of \$25.00 for each of the above two months for late fees as set out in the Residential Tenancy Agreement for this tenancy.

I allow the landlords to retain the tenant's deposits plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlords have been successful in their application, I find that the landlords are entitled to recover their filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlords 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 landlords' favour under the following terms, which allows the landlords to recover unpaid rent and the filing fee from the tenant and to retain the tenant's deposits:

Item	Amount
Unpaid Amount Owing for May 2013 Rent (\$975.00 - \$250.00 = \$725.00)	\$725.00
Unpaid June 2013 Rent	975.00
Late Fees for May and June 2013	50.00
Less Security and Pet Damage Deposits	-975.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$825.00</b>

The landlords are 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: June 07, 2013

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Residential Tenancy Branch

