



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sy Fong Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, FF

### 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
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 3:20 p.m. in order to enable her to connect with this teleconference hearing scheduled for 3:00 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 one of the landlord's representatives posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door at 10:15 a.m. on May 6, 2013. The landlord submitted written evidence in the form of a signed and witnessed Proof of Service document attesting to the posting of the 10 Day Notice on the tenant's door at that time and date. The landlord testified that the landlord's maintenance supervisor handed the tenant a copy of the landlord's dispute resolution hearing package on May 17, 2013. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord 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 December 15, 2008. At the expiration of the initial term, the tenancy continued as a periodic tenancy. Monthly rent is currently set at \$1,623.00, payable in advance on the first of the month. The landlord continues to hold the tenant's \$750.00 security deposit paid on November 13, 2008.

The landlord testified that the tenant has not paid the \$1,623.00 in rent owing as of May 1, 2013 in full. Although the landlord believed that the tenant likely vacated the rental

unit by June 6, 2013, he remained uncertain as the tenant has left some of her belongings behind and has not provided her keys or a forwarding address to the landlord. The landlord requested an Order of Possession as he remains somewhat uncertain as to whether the tenant may return. He also requested the recovery of the landlord's filing fee from the tenant.

### Analysis

The tenant failed to pay the May 2013 rent within five days of being deemed to have received the 10 Day Notice on May 9, 2013. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received 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 19, 2013. As that has not occurred and the tenant is no longer residing in the rental unit, I find that the landlord is entitled to an immediate Order of Possession. The landlord will be given a formal Order of Possession, which the landlord may enforce if necessary in the Supreme Court of British Columbia. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

### Conclusion

The landlord is provided with a formal copy of an Order of Possession. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord a monetary award of \$50.00 to recover the landlord's filing fee from the tenant. To implement this monetary award and in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$50.00 from the tenant's security deposit. I order that the value of the security deposit retained by the landlord is reduced from \$750.00 to \$700.00, plus applicable interest.

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 14, 2013

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Residential Tenancy Branch

