



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capilano Property Management Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD and FF

### Introduction

This application was brought by the landlord on May 24, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on May 2, 2013 and setting an end of tenancy date of May 15, 2013. The landlord also sought a monetary award for unpaid rent, recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on May 28, 2013, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

### Issue(s) to be Decided

This application now requires a decision on whether the landlord is entitled to an Order of Possession and monetary award as requested.

### Background and Evidence

This tenancy began on August 1, 2011. Rent is \$810 per month and the landlord holds a security deposit of \$400 paid on July 27, 2013.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of May 2, 2013 had been served when the tenant had failed to pay the \$810 rent due on May 1, 2013.

The landlord stated that the tenant had made a number of partial payments in the interim, but the May 2013 was not paid in full until the first week of June 2013. The landlord stated that in each instance, he had issued the tenant with a receipt with the notation, "for use and occupancy only," indicating that the acceptance of the partial payments did not constitute reinstatement of the tenancy.

At the time of the hearing on June 18, 2013, the landlord stated that the tenant still had a rent shortfall of \$220 for the June rent and he requested a monetary award for that amount as well as an Order of Possession.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was May 15, 2013.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

I further find that the landlord is entitled to a monetary award for the rent shortfall for June 2013.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenant and, as authorized under section 72 of the *Act*, I hereby order that the landlord may retain the full amount owed from the tenant's security deposit.

Thus, I find that accounts balance as follows:

<b>Tenants' Credit</b>		
Security deposit	\$400.00	\$400.00
<b>Award to Landlord</b>		
Rent shortfall for June 2013	\$220.00	
Filing fee	<u>50.00</u>	
Sub total	\$270.00	- <u>270.00</u>
<b>Remainder of security deposit</b>		<b>\$130.00</b>

### Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.

In addition, the landlord is authorized to retain \$270 of the tenant's security deposit in satisfaction of the balance of the June 2013 rent and filing fee for this proceeding. The balance of the security deposit remains to be addressed in accordance with section 38 of the *Act* at the conclusion of the tenancy.

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 18, 2013

---

Residential Tenancy Branch