



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

OPR, MNR, MNSD, FF

### **Introduction**

This hearing was convened in response to an amended application by the landlord originally dated June 13, 2013 and amended July 04, 2013. The application is pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38
4. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing.

The tenant still resides in the unit as of this date.

The landlord was given full opportunity to be heard, to present evidence and to make submissions.

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

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenancy began on April 09, 2012. Rent in the amount of \$778.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$375.00 which the landlord retains in trust. The tenant failed to pay rent and arrears of \$806.00 on the due date for

the month of June 2013, and on June 02, 2013 the landlord personally served the tenant with a notice to end tenancy for non-payment of rent with an effective end date of June 12, 2013. The tenant did not pay any of the rent arrears within the 5 days permitted to do so under the Act and stipulated in the notice to end. However, the tenant paid a portion of rent of \$340.00 on June 11, 2013, which the landlord accepted for *use and occupancy only* and further stated on the receipt to the tenant that the landlord *was not* reinstating the tenancy, and subsequently has applied to end it. On June 27, 2013 the tenant paid \$750.00 - satisfying the remainder of arrears to that date, which the landlord again accepted for *use and occupancy only*, with a consequent credit to the tenant of \$284.00 toward subsequent occupancy of the unit. The tenant did not vacate in June 2013 and as the tenant continued to reside in the unit into July 2013 the landlord now seeks the balance of rent for the current month of July 2013 in the amount of \$294.00 - after having applied the credit of \$284.00, and a further payment of \$200.00 on July 08, 2013.

### **Analysis**

Based on the landlord's testimony and evidence I find that the tenant was served with a notice to end tenancy for non-payment of rent on June 02, 2013 and I find the notice to be valid. Despite having eventually satisfied all the rent for June 2013 the tenant did not pay all the outstanding rent within the required 5 days to do so, and has not applied for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice – June 12, 2013. The tenant did not vacate and continued to occupy the unit into July 2013 making sporadic payments of rent toward their ongoing occupancy.

Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

As for the monetary claim, I find that the landlord has established a monetary claim for rent arrears to this date of \$294.00. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$344.00**.

The security deposit will be off-set from the award made herein.

### **Conclusion**

**I grant** an Order of Possession to the landlord **effective 2 days** from the day it is served. The tenant must be served with this **Order of Possession**. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

**I Order** that the landlord retain **\$344.00** from the tenant's security deposit of \$375.00 in full satisfaction of the monetary claim and that the landlord administer the remainder of the security deposit at the end of the tenancy in accordance with Section 38 of the Act.

**This Decision is final and binding on both parties.**

*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: July 15, 2013

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Residential Tenancy Branch

