



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on June 21, 2013. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

During the meeting the Landlord said he was mistaken when he filled out the application as he also wanted to request to keep the Tenant's security deposit as partial payment of the rent arrears. I accept the Landlord's request and I amend the application to include retention of the security deposit as partial payment of rent arrears if the Landlord is successful.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the Tenant's security deposit?

### Background and Evidence

This tenancy started on February 25, 2013 as a 1 year fixed term tenancy. Rent is \$850.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$425.00 on January 30, 2013.

The Landlord said he believes the Tenant has abandoned the rental unit on July 16, 2013, but he still is requesting an Order of Possession in case the Tenant comes back and claims possession of the unit because it is a fixed term tenancy agreement. The Landlord said he would like the Order of Possession for as soon as possible if he is successful in this matter.

The Landlord said that the Tenant did not pay \$850.00 of rent for June, 2013 when it was due and as a result, on June 11, 2013 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated June 11, 2013 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for July, 2013 of \$850.00 and the Landlord is requesting lost rental income for ½ the month of August, 2013 in the amount of \$425.00 as he has been unable to rent the unit and he anticipates that he will loss the rent for August, 2013. In addition the Landlord is requesting late fees in the amount of \$25.00 for each month of June and July, 2013.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on June 13, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than June 18, 2013.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for June, 2013, in the amount of \$850.00 and unpaid rent for July, 2013 in the amount of \$850.00. I further find that the Landlord is entitled to recover a loss of rental income from August 1 to August 15, 2013, in the amount of \$425.00 (1/2 a month's rent). The Landlord has an obligation to mitigate his damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible. I further find that the Landlord is entitled to recover the late charge of \$25.00 for June and July, 2013.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,700.00	
	Loss of Rental Income:	\$ 425.00	
	Late payment fees(2)	\$ 50.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,225.00
Less:	Security Deposit	\$ 425.00	
	Subtotal:		\$ 425.00
	Balance Owing		\$1,800.00

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,800.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 22, 2013

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Residential Tenancy Branch

