



# 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 scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on June 24, 2013 the initial Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service.

On July 11, 2013 the landlord served the tenant with an amended application and hearing package, sent via registered mail to the tenant's rental unit address. The landlord provided a copy of the registered mail receipt, as evidence of service.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

### **Preliminary Matters**

The original application included a monetary worksheet containing a detailed calculation of the claim. That claim indicated unpaid rent in the sum of \$1,343.60; and the invoice total on the tenant ledger (page sixteen of the evidence); \$145.60. The landlord said that the claim for unpaid rent included a late fee in the sum of \$25.00.

The amended application increased the sum claimed for rent, to include unpaid July, 2013 in the sum of \$1,172.00.

In the absence of a specific reference to a claim for late fees, I have considered the claim in relation to unpaid June and July, 2013 rent and damage or loss for the invoice costs.

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

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and damage or loss under the Act?

May the landlord retain the security deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on September 1, 2010; a security deposit in the sum of \$549.00 was paid. Rent in the current sum of \$1,172.00 is due on the 1<sup>st</sup> day of each month. A copy of the tenancy agreement was supplied as evidence.

The building manager provided affirmed testimony that on June 3, 2013, at 2 p.m., she posted a 10 day Notice to end tenancy for unpaid rent, to the tenant's door. Another tenant was present as a witness and signed the Notice, confirming service had occurred.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,197.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice; June 13, 2013, unless the tenant filed an Application for Dispute Resolution within five days.

The landlord has claimed compensation for unpaid June and July 2013 rent in the sum of \$2,344.00.

The amount indicated on the Notice included a sum for late fees.

The landlord supplied a copy of an invoice issued on February 28, 2013, for the cost of a 3<sup>rd</sup> inspection by a heating professional; \$145.60. The invoice indicated that this was the 3<sup>rd</sup> time he checked the unit, as the result of the tenant's complaint that the heat was not working. The professional indicated that each time he had checked the unit the heat was functioning. The landlord has claimed the cost of this service, as the tenant refused to cease making complaints about a lack of heat. The landlord attempted to respond to the tenant's concerns, but once the unit was checked a 3<sup>rd</sup> time and again it was established that the heat in fact worked, the landlord believes the tenant must assume the cost of this service.

On April 13, 2012 the landlord sent the tenant a letter indicating that he owed the landlord \$145.60 for the cost of the 3<sup>rd</sup> inspection of the heating system.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on June 6, 2013.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on June 6, 2013, I find that the earliest effective date of the Notice is June 16, 2013.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was June 16, 2013.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on June 16, 2013, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service of the Order to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$2,344.00 for June and July, 2013, and that the landlord is entitled to compensation in that amount.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the claim compensating the landlord for the cost of having a professional attend at the unit for a 3<sup>rd</sup> inspection of the heating system; I find, in the absence of the tenant who was served with Notice of this hearing, that the tenant has made repeated reports of no heat, that are unfounded. The landlord has attempted to comply with the Act, by ensuring a professional checked the heating system; not doing so would potentially place the landlord at risk of accusation by the tenant of a failure to comply with section 32 of the Act.

I have considered the actions of the tenant and cannot find that the tenant has breached the Act, Regulation or the tenancy agreement. In the absence of any written notice by the landlord to the tenant, that repeated, unfounded reports of heat could result in costs to the tenant, I find that the claim for the cost of checking for heat is dismissed.

In the absence of a specific claim set out in the detailed calculation for late fees I have not considered late fees.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$549.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,845.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession.

The landlord is entitled to a monetary Order for unpaid rent.

The landlord may retain the security deposit.

The claim for heating inspection costs is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 24, 2013

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Residential Tenancy Branch