



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an application by the landlord for an Order of Possession and a Monetary Order for: unpaid rent or utilities; to keep all or part of the pet damage or security deposit and to recover the filing fee from the tenant for the cost of this application.

The landlord filed this application on June 7, 2013 and served the tenant by registered mail on the same day with a copy of the application and Notice of Hearing documents. The landlord provided the Canada Post tracking number and based on this, I find that the tenant was served the hearing documents as per the *Residential Tenancy Act*.

The landlord attended the hearing to give affirmed testimony and provided evidence in advance of the hearing. The landlord was also permitted, under Section 11.5 of the Rules of Procedure, to provide additional evidence after the hearing had concluded, namely the second page of the notice to end tenancy. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence submitted was carefully considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that the tenancy for the rental unit started on September 1, 2002 with another tenant. The tenant for this dispute moved into the unit on November 19, 2007 and replaced the old tenant. The tenancy was on a month-to-month basis and the landlord collected a security deposit, related to the tenancy, on August 26, 2002 in the amount of \$392.50. Currently, rent in the amount of \$880.00 is payable by the tenant on the 1<sup>st</sup> day of each month.

The landlord testified that the tenant was in rent arrears for April, 2013 of \$873.99 and for May, 2013 of \$880.00, for a total amount of \$1,753.99. As a result, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on May 7, 2013 with an expected date of vacancy of May 17, 2013. The notice to end tenancy was posted on the door and provided as evidence for the hearing.

The landlord further testified that on May 14, 2013 the tenant dropped a money order in the mail box of the site office in the amount of \$880.00. The money order was cashed on May 16, 2013 and the tenant was issued a letter by the landlord stating that a balance of \$873.99 was still outstanding and that the landlord still expected the tenant to vacate the unit in accordance with the notice.

On June 5, 2013 the landlord was notified by the bank that a post dated cheque, provided by the tenant to the landlord for June 1, 2013 some months ago, had been stopped and therefore, June's rent had also not been paid. This left the tenant owing a balance of \$1,753.99. However, the tenant again made a payment of \$880.00 by personally delivering a money order to the site office on June 7, 2013 for which she was issued a receipt stating that the money was being accepted for use and occupancy only; this was provided as evidence for the hearing. On June 10, 2013 the tenant was also issued with a formal letter stating that the money had been accepted for use and occupancy only and that the tenant owed \$1,753.99. However, the landlord testified that this amount was incorrect as it was a typing error which should have read \$873.99.

The landlord also claims a \$20.00 late rent payment fee as documented by Section 3(d) in the written tenancy agreement provided as evidence for this hearing.

As a result, the landlord seeks an Order of Possession, and to recover the outstanding balance of \$873.99 in rent arrears including the \$20.00 late fee. The landlord testified that the tenant is still residing in the rental unit and now seeks to also recover lost rent for July, 2013.

The tenants failed to attend the hearing or provide any written submissions prior to this hearing taking place.

### Analysis

Section 46(4) and (5) of the *Residential Tenancy Act* states that within five days of a tenant 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, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the notice relates.

As a result, I find that the tenant was served by the landlord with the notice to end tenancy on May 7, 2013, by posting it on the tenant's door. The *Act* states that documents served in this manner are deemed to have been served three days after. Therefore, I find that the tenant was deemed to be served on May 10, 2013, and had until May 15, 2013 to pay the overdue rent or apply to dispute the notice as required by the *Act*, neither of which the tenant did. As a result, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on May 17, 2013.

The landlord has accepted partial payments of rent towards the rent arrears but, on both occasions, issued the tenant with receipts and documents that clearly state that the tenancy was not re-instated. Therefore, I find that the tenancy has not been re-instated and that the notice to end tenancy is still in effect.

In relation to the landlord's monetary claim I award the following amounts:

- \$873.99 for outstanding rent up until June, 2013
- \$20.00 late fee as evidenced by the clause in the written tenancy agreement
- \$880.00 for July's rent as the tenant is still residing in the unit and there is not enough time for the landlord to re-rent the unit
- \$50.00 filing fee as the landlord has been successful in this matter.

Therefore, the landlord is entitled to an Order of Possession and a monetary order for \$1,823.99 as detailed above.

As the landlord already holds a \$392.50 security deposit and the interest payable on this is \$13.91, I find the landlord is entitled to keep the total of \$406.41 in partial satisfaction of the claim pursuant to Section 38(4) (b) of the *Act*. I hereby grant a monetary order in favor of the landlord for the difference in the amount of \$1,417.58.

Conclusion

For the reasons set out above, I find the landlord is entitled to an Order of Possession effective **2 days after service on the tenant**. This order must be served on the tenant and may be filed and enforced in the Supreme Court as an order of that Court.

I find that the landlord is also entitled to monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,417.58**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 08, 2013

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Residential Tenancy Branch