



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and to recover the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order, and to recover the filing fee?

### Background and Evidence

The landlord gave undisputed evidence that this tenancy began on March 1, 2013, monthly rent is \$900, and a security deposit of \$450 was paid by the tenant at the beginning of the tenancy on or about February 22, 2013.

The landlord gave evidence that on July 9, 2013, he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it with the tenant, listing unpaid rent of \$950 as of July 1, 2013. The effective vacancy date listed on the

Notice was July 22, 2013. The landlord acknowledged that \$50 of the amount listed was for a NSF fee of \$25 and a late fee of \$25.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant attempted to make a rent payment within 5 days of the Notice being issued, but that when the tenant was informed the landlord still intended to proceed with an eviction, the tenant took back his payment.

In explanation, the landlord said that he understood that the 10 Day Notice would be cancelled if the tenant paid his rent within 5 days, but that the landlord intended to issue the tenant a 1 Month Notice to End Tenancy for Cause for repeated late payment of rent.

The landlord said that the tenant additionally owed rent for August and September 2013.

The tenant acknowledged owing this amount as claimed by the landlord; however, the tenant further stated that he attempted to pay the landlord this amount, with the landlord either refusing to accept the payment or to return his telephone calls.

The tenant said that he would be able to make all rent payments by the end of September.

### Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I do not accept that the tenant was prevented from paying his rent and that it was his obligation to so pay.

I therefore find that the tenancy is ending due to the tenant's failure to pay his rent and I further find the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

I also find that the landlord has proven an entitlement to a monetary award of \$2750 comprised of unpaid rent of \$900 each for the months of July, August and September, and the \$50 filing fee paid by the landlord for this application.

I have not awarded the landlord late fees or a NSF fee as I find no provision for the same contained within the tenancy agreement.

### Conclusion

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$2750, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

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* and is being mailed to both the applicant and the respondent.

Dated: September 05, 2013

---

Residential Tenancy Branch

