



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD and FF

### Introduction

This application was brought by the landlord on July 25, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenants' door on July 15, 2013. The landlord also sought a monetary award for unpaid rent, billing for pay-per-view cable programs, recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

At the commencement of the hearing, the landlord gave evidence that the tenant had vacated the rental unit during the late hours of September 2, 2013 and the early morning hours of September 3, 2013 and the Order of Possession was no longer required.

### Issue(s) to be Decided

This application now requires a decision on whether the landlord is entitled to a monetary award as requested.

### Background and Evidence

This tenancy began on April 1, 2013 and rent was \$1,100 per month.

The tenancy agreement has specified a security deposit of \$550 but the tenant had paid only \$225 of that.

During the hearing, the landlord gave evidence that the 10-day Notice to End Tenancy of July 15, 2013 when the tenant had failed to pay any of the rent for June and July 2013. In the interim, the tenant remained in the rental unit until September 3, 2013 and had made one \$300 payment in August 2013. The tenant vacated without providing a forwarding address.

In addition, the landlord submitted into evidence a copy of cable bill showing that in June and July 2013, the tenant had ordered \$24.95 in pay per view programming including tax.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was July 28, 2013, taking into account the three days for deemed service of notice served by posting. Therefore, the tenant retains no right to return to the rental unit.

Section 67 of the *Act* authorizes the director's delegate to determine an amount of money owed by one party to and do order payment of that amount.

In the present matter, I find that the tenant owes the landlord rent for June, July and August 2013, less the \$300 payment made in August.

I find that the landlord is entitled to recover the \$24.95 pay per view ordered by the tenant and beyond the standard service provided for in the rental agreement.

I further find that the landlord is entitled to recover the filing fee for this proceeding from the tenant and, as authorized under section 72 of the *Act*, I order that the landlord retain the tenant's security deposit in set off against the balance owed.

Thus, I find that the tenant owes the landlord an amount calculated as follows:

Award to Landlord		
Rent for June 2013	\$1,100.00	
Rent for July 2013	1,100.00	
Rent for August 2013	1,100.00	
Pay per view cable charge	24.95	
Filing fee	<u>50.00</u>	
Sub total	\$3,374.95	\$3,374.95
Tenant's credits		
Rent payment made in August 2013	\$ 300.00	
Less retained partial security deposit (no interest due)	<u>225.00</u>	
Sub total	\$525.00	<u>- 525.00</u>
<b>TOTAL remainng owed to landlord by tenant</b>		<b>\$2,849.95</b>

### Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for **\$2,849.95**, enforceable through the Provincial Court of British Columbia, for service on 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*.

Dated: September 03, 2013

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Residential Tenancy Branch