



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR; MNR; MNDC; MNSD; FF

### **Introduction**

This is the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent; for compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that she posted the Notice of Hearing documents and copies of her documentary evidence to the Tenant's door on August 9, 2013. The Tenant acknowledged receipt of the documents on August 11, 2013.

I find that the Landlord served the Tenant with the documents in accordance with the provisions of Section 89(2) of the Act for the purposes of requesting an Order of Possession, but that she did not serve the Tenant in accordance with the provisions of Section 89(1) of the Act for the purposes of requesting a monetary order. However, the Tenant acknowledged receipt and therefore I find that she was sufficiently served on August 11, 2013, pursuant to the provisions of Section 71(2)(b) of the Act.

The Landlord testified that she posted a second package of documentary evidence to the Tenant's door on September 9, 2013. The Tenant stated that she did not receive the second package of documents. I find that the Landlord did not provide sufficient proof of service and therefore the second package of documents was not considered.

### **Preliminary Matters**

The Tenant testified that she had also filed an Application for Dispute Resolution and that the hearing took place on September 13, 2013. She stated that she had not received a copy of the Decision yet and provided the file number. A search of the Residential Tenancy Branch's data base indicates that the Tenant's application was for monetary orders and a rent reduction. The Tenant did not seek to cancel the Notice to End Tenancy issued on August 2, 2013, and therefore the Notice was uncontested.

### **Issues to be Decided**

Is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent

and loss of revenue? May the Landlord apply the security deposit towards partial satisfaction of her monetary award?

### **Background and Evidence**

The Landlord testified that this tenancy began on May 15, 2013. Monthly rent is \$650.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$325.00 at the beginning of the tenancy.

The Landlord testified that the Tenant owes prorated rent for the month of May in the amount of \$225.00. She stated that she applied \$225.00 of June's rent payment towards the May arrears and that the Tenant has not paid August or September rent. Therefore, the Landlord issued a Notice to End Tenancy on August 2, 2013 (the "Notice"), and handed it to the Tenant in person on August 2, 2013.

The Landlord also seeks a late fee for May's rent in the amount of \$10.00.

The Tenant acknowledged receiving the Notice on August 2, 2013. She said the Landlord did not give her keys to the rental unit until May 24, 2013, and that she moved in on May 26, 2013. The Tenant stated that she gave the Landlord \$100.00 towards prorated rent for May, 2013. The Tenant agreed that she has not paid rent for August or September, 2013.

### **Analysis**

I accept that the Landlord served the Tenant with the Notice to End Tenancy on August 2, 2013. The Tenant did not pay the arrears, or file for dispute resolution, within 5 days of receiving the Notice. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on August 12, 2013. I find that the Landlord is entitled to an Order of Possession.

I find that the tenancy began on May 24, 2013, the day that the Tenant received the keys from the Landlord.

I find that the Landlord's agent has established a monetary claim for unpaid rent and loss of revenue for the months of June, August and September, as follows:

May arrears (carried forward to June, 2013)	\$67.76
$\$650.00 / 31 = \$20.97$ per day 8 days x $\$20.97 = \$167.76$	
$\$167.76 - \$100.00$ paid = $\$67.76$	
August arrears	\$650.00
Loss of revenue for September	<u>\$650.00</u>
TOTAL	\$1,367.76

The tenancy agreement provides for late fees in the amount of \$10.00 and I find that the Landlord is entitled to that portion of her application.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of her monetary award. No interest has accrued on the security deposit.

The Landlord has been successful in her application and I find that she is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent, loss of revenue and late fee	\$1,377.76
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,427.76
Less security deposit	<u>- \$325.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$1,102.76</b>

### **Conclusion**

I hereby provide the Landlord with an Order of Possession effective **2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord with a Monetary Order in the amount of **\$1,102.76** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (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: September 18, 2013

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Residential Tenancy Branch

