



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on June 11, 2011 for a 6 month and 1 day fixed term tenancy beginning on July 15, 2011 that converted to a month to month tenancy on January 16, 2012 for the monthly rent of \$1,300.00 due on the 1<sup>st</sup> of each month and a security deposit of \$650.00 was paid. The tenancy agreement included a clause indicating a fee of \$50.00 for the payment of rent 5 days after the due date; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 2, 2013 with an effective vacancy date of August 12, 2013 due to \$1,300.00 in unpaid rent.

The parties agree the tenant failed to pay the full rent owed for the month of August 2013 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on August 2, 2013.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The tenant also did not pay rent for the month of September 2013.

In addition the landlord seeks compensation in the amount of \$200.00 for 4 months of late payment fees unpaid by the tenant (April, May, August, and September 2013). The tenant did not dispute this portion of the landlord's claim.

### Analysis

I have reviewed all evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on August 5, 2013 and the effective date of the notice is amended to August 15, 2013, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

While the tenancy agreement stipulates that a late payment fee of \$50.00 would be charged for any rent payment not made within 5 days after the day that rent was due, I note that Section 7(d) of the Residential Tenancy Regulation stipulates that a maximum of \$25.00 may be charged for the late payment of rent.

As such, and without any dispute from the tenant I find the landlord is entitled to \$100.00 for the late payment of rent on the four occasions noted by the landlord in her Application.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,750.00** comprised of \$2,600.00 rent owed; \$100.00 late payment fees and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$650.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,100.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 16, 2013

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Residential Tenancy Branch

