



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kiinsmen Creekside Estates  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:48 p.m. in order to enable her to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she placed the first 10 Day Notice to End Tenancy for Unpaid Rent (the first 10 Day Notice) in the tenant's mailbox and inserted it inside her interior door on August 6, 2013. The landlord testified that she served the second 10 Day Notice to the tenant in the same manner on August 23, 2013. She testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on September 13, 2011. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This periodic tenancy commenced on March 1, 2013. Economic rent is set at \$1,200.00 of which the tenant's portion of the monthly rent for this subsidized rental unit is set at

\$569.00. Monthly rent is payable in advance on the first of each month. The landlord continues to hold the tenant's \$600.00 security deposit paid on February 27, 2013.

The landlord identified \$594.00 in unpaid rent and a late fee/NSF fee owing for July 2013 rent on the first 10 Day Notice. The landlord testified that after issuing the first 10 Day Notice, the tenant's \$569.00 rent cheque for August 2013 also came back as NSF. The landlord then issued the second 10 Day Notice, identifying a total of \$1,188.00 as then owing. The landlord testified that the tenant paid \$594.00 of the amounts identified as owing in the 10 Day Notices near the end of August 2013. The tenant also made an \$1,188.00 money order payment on October 21, 2013. The landlord said that she issued a receipt showing that this payment was accepted for use and occupancy only.

The landlord testified that the \$594.00 payment looked after monthly rent owing for July 2013, when the tenant's rent cheque for that month was returned as NSF. She said that the tenant's \$1,188.00 money order resolved her August 2013 NSF payment for that month and the additional \$569.00 that became due on September 1, 2013. She testified that the most recent \$1,188.00 payment did not pay anything towards the tenant's October 2013 rent, which remains owing. The landlord asked for recovery of the \$50.00 filing fee for the landlord's application as well as the unpaid rent for October 2013. In total, the landlord testified that the tenant owes \$569.00 in rent. The landlord reduced the amount of her requested monetary award from \$619.00 to \$600.00, which would allow the landlord to recover the tenant's \$600.00 security deposit. She also requested the issuance of an Order of Possession.

### Analysis

I find that the landlord's acceptance of the \$1,188.00 payment from the tenant towards this tenancy for use and occupancy only does not reinstate this tenancy. The tenant failed to pay the full amount identified as owing in the second 10 Day Notice within five days of being deemed to have received the second 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the second 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by September 8, 2013. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the evidence before me, I find that the landlord is entitled to the \$600.00 monetary award she has requested for unpaid rent owing from October 2013 and for recovery of the filing fee for this application. To implement this monetary award, I allow the landlord to retain the tenant's security deposit, plus applicable interest. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the landlord's favour in the amount of \$600.00, which allows the landlord to recover unpaid rent and the filing fee for this application. To implement this award, I order the landlord to retain the tenant's security deposit.

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: October 23, 2013

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Residential Tenancy Branch

