



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUNSET PARK APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and or pet deposit; and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord provided affirmed testimony that the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on September 27, 2013, by registered mail. Canada Post tracking information was provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant is deemed served notice of this proceeding on October 2, 2013, five days after they were mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenant's absence.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord testified that she began work at this building on July 1, 2013, and on that date she found the Tenant residing in unit # 231. Upon review of her files there was no tenancy for this Tenant in unit #231; however he did sign a written month to month tenancy for unit # 329 which began on July 1, 2012. On June 20, 2012, the Tenant paid \$347.50 as the security deposit and was required to pay \$695.00 monthly rent which was due on or before the first of each month.

The Landlord stated that when the Tenant failed to pay July, August or September rent, a 10 Day Notice was issued on September 7, 2013, and posted to his door in the

presence of a witness. The Landlord was told that on the weekend of October 19, 2013, the Tenant was seen moving out. The Landlord entered the unit on October 21, 2013, after posting a proper notice of entry, and found that the Tenant had moved out of the unit. No keys were returned however the unit was empty except for a few articles they placed in a basket in storage. They have regained possession so they were withdrawing their request for an Order of Possession. The Landlord requested the Monetary Order for unpaid rent for four months of July, August, September and October 2013.

### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

The Tenant is deemed to have received the 10 Day Notice on September 10, 2013, three days after it was posted to her door, and the effective date of the Notice is **September 20, 2013**, in accordance with section 90 of the Act. The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act.

In this case the Tenant vacated the unit and the Landlord regained possession on October 21, 2013. The request for an Order of Possession was withdrawn.

The Landlord claimed unpaid rent of \$2,085.00 which was due September 1, 2013 and was comprised of July, August, and September 2013 rent at \$695.00 per month (3 x \$695.00). The Tenant failed to pay rent in accordance with the tenancy agreement which I find to be a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$2,085.00**.

As noted above this tenancy ended **September 20, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for October 2013, not rent. The Tenant continued to occupy the unit until October 20, 2013, and the Landlord now has to work to ready the unit and find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of October 2013, in the amount of **\$695.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent July, August, September	\$2,085.00
Use & Occupancy & Loss of Rent October 2013	695.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$2,830.00</b>
<b>LESS:</b> Security Deposit \$347.50 + Interest 0.00	<u>-347.50</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$2,482.50</u></b>

### Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$2,482.50**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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: November 05, 2013

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Residential Tenancy Branch

