



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 353806 B.C. Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's agent (the landlord), the manager of this rental building, testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), the most recent in a lengthy series of 10 Day Notices, on the tenants' door on December 6, 2013. The female tenant (HAS), the only Respondent who attended the hearing, confirmed that she and the male Respondent received the 10 Day Notice as maintained by the landlord. I am satisfied that the landlord served the 10 Day Notice in accordance with section 88 of the *Act*.

The landlord testified that he sent copies of his dispute resolution hearing package to both Respondents by registered mail on December 20, 2013. The landlord entered into written evidence copies of the Canada Post Tracking Numbers and Customer Receipt to confirm these registered mailings. The female tenant (the tenant) confirmed that she received a copy of the landlord's dispute resolution hearing package by registered mail. She said that the other Respondent has not signed for his copy of the hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both Respondents are deemed to have been served with the landlord's dispute resolution hearing package on December 27, 2013, the fifth business day after the landlord sent the packages by registered mail. The tenant also confirmed that she received a copy of the landlord's written evidence package, which I also consider to have been served to both Respondents in accordance with the *Act*.

### Issues(s) to be Decided

Is the male Respondent a tenant under the Act? 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 recover the filing fee for his application from the tenant?

### Background and Evidence

The female tenant, signed a Residential Tenancy Agreement (the Agreement) with the landlord on April 26, 2013, for a fixed term tenancy to run from May 1, 2013 to April 30, 2014. The male Respondent (DLS) was listed as an occupant on this Agreement, but was not identified as a tenant. Although the female tenant testified that the male Respondent also signed the Agreement, I see no evidence that this is the case on the written copy of the Agreement entered into written evidence by the landlord. The sole signature in the tenant's signature section of the Agreement is that of the female tenant. The signature attributed to the male Respondent by the female tenant is in the section of the Agreement below the female tenant's signature. The signature in that section is identified as "Agreed and signed by \_\_\_\_\_ (as agent for the landlord)\_\_\_\_\_." The landlord said that he was not managing this property at the time the Agreement was signed so he did not know if the male Respondent mistakenly signed the Agreement in the section of the Agreement designated for the landlord's signature.

Monthly rent is set at \$800.00, payable in advance on the first of each month. The landlord continues to hold the \$400.00 security deposit for this tenancy paid on April 26, 2013.

The landlord testified that there have been no payments made towards this tenancy since the landlord issued the 10 Day Notice of December 6, 2013. The landlord identified \$4,050.00 in unpaid rent owing in the 10 Day Notice. Since that time, rent also became owing for January 2014. The landlord also entered into written evidence copies of 10 Day Notices that extend from August 2013 until December 2013.

The landlord's application for a monetary award of \$4,850.00 included unpaid rent of \$800.00 for each of the six months from August 2013 until and including January 2014. The landlord's application also included a request for reimbursement of \$50.00 in unpaid parking for August 2013 and the recovery of the landlord's \$50.00 filing fee.

The tenant did not deny the landlord's claim that nothing was paid to the landlord within 5 days of being deemed to have received the 10 Day Notice of December 6, 2013. However, she gave sworn testimony that after 5:00 p.m. on January 8, 2014, she placed \$4,850.00 in four envelopes under the door of the management office for this rental building. The landlord denied having received any such payment towards this tenancy.

During the hearing, the tenant questioned the landlord about a break-in that the landlord confirmed occurred between 10:00 p.m. on January 8, 2014, and 6:00 a.m. on January 9, 2014. The landlord testified that items were taken from the management office that night. He also confirmed that a report of this incident was filed with the police. Neither party has received copies of the police report regarding this incident.

### Analysis

As noted above, the male Respondent was listed as an occupant on the Agreement. If he did, in fact, sign the Agreement as the tenant maintained, he did so in the area of the Agreement that was dedicated to the landlord or the landlord's agent. Under these circumstances, I find that the landlord's application has incorrectly identified the male Respondent as a Tenant in this Agreement. Under these circumstances, I find that the only correct Respondent who can be included in the landlord's application is the female tenant (HAS).

There is undisputed sworn testimony from both parties that the tenant failed to pay the \$4,050.00 identified as owing in the 10 Day Notice in full within five days of being deemed to have received the 10 Day Notice on December 9, 2013. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 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 this tenancy on the corrected effective date of the notice. In this case, this required the tenant to yield vacant possession of the premises by December 19, 2014. 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 **and everyone on the premises** do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that there is conflicting sworn testimony from the parties as to whether the tenant did pay the rent identified as owing in the landlord's application. As noted above, the tenant testified that she placed \$4,850.00 in envelopes under the office door of the landlord. The landlord denied having received this payment.

The tenant testified that no one witnessed her place the \$4,850.00 in cash in the envelopes, nor did anyone witness her place these envelopes under the office door of the landlord. She said that she has not received a receipt for this payment from the landlord. The tenant provided no written evidence of any type to confirm how or when she obtained this considerable sum of money to pay outstanding rent for this tenancy. I asked if she had any bank statements or records of any type to support her claim that

she had this large sum of cash available to her on January 8, 2014, to place in envelopes. She said that she had been acquiring this money over time, and had chosen not to pay her rent because of issues of concern within this building that were common to other tenants. She said that others also withheld their rent for a number of months. She testified that she obtained the cash from Money Mart over a period of months and that she could likely obtain documentation from that company if necessary.

I have carefully considered the tenant's sworn testimony and the confirmation from the landlord that his office was broken into on the night of January 8, 2014, the same date that the tenant claimed to have paid her rent. While this is an admittedly unusual sequence of events, the prime issue before me remains whether the outstanding rent was actually paid by the tenant.

At the hearing, neither party provided any witnesses, witness statements or any other written documentation that would lend credence to their sworn testimony regarding the alleged payment or non-payment of the rent on January 8, 2014. I find the credibility of the sworn testimony provided by both parties of equal value in this regard. However, I find that the tenant had many options that would have provided her with a more secure method of payment of her outstanding rent. Given that her rent was many months in arrears and there appeared to be no urgency to provide her payment to the landlord on the evening of January 8, 2014, after the landlord's office closed, the tenant could have waited until the next day to hand her payment to the landlord or his representative and obtain a receipt for her payment at that time. She could also have made her payment by way of a bank draft, money order or cheque, all of which would have left some form of formal record when someone cashed those instruments. Rather than taking any of these less risky options of payment, the tenant testified that she chose to place money in four envelopes under the landlord's door after his office closed. Based on a balance of probabilities, I find that the tenant's conduct in placing a significant sum of money under the door was neglectful and placed her cash payment at risk. I find that she must bear the resulting consequences of her decision to place her cash payment at risk. I find that the tenant remains responsible for unpaid rent that the landlord testified he has not received.

For the reasons outlined above, I find that the landlord is entitled to a monetary award of \$800.00 from the female tenant for each of the six months from August 2013 until and including January 2014 for unpaid rent. I dismiss the landlord's application to recover an unpaid parking charge of \$50.00 without leave to reapply, as I find that this was a matter separate from the unpaid rent requested by the landlord.

I allow the landlord to retain the \$400.00 security deposit for this tenancy plus applicable interest. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

#### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises 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 Order in the landlord's favour under the following terms, which enables the landlord to recover unpaid rent and his filing for this tenancy and to retain the security deposit for this tenancy:

<b>Item</b>	<b>Amount</b>
Unpaid Rent August 2013 until January 2014 (6 months @ \$800.00 - \$4,800.00)	\$4,800.00
Less Security Deposit	-400.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$4,450.00</b>

The landlord is provided with these Orders in the above terms and the female tenant must be served with this Order as soon as possible. Should the female tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 15, 2014

---

Residential Tenancy Branch

