



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 his 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.

### Service of Documents

The landlord gave sworn testimony and provided written evidence that he handed the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenant's adult daughter on December 2, 2013. He entered into written evidence a Proof of Service document, in which both he and the tenant's 30-year old daughter confirmed that he handed the tenant's adult daughter the 10 Day Notice at 11:45 a.m. on December 2, 2013. The tenant denied having received the 10 Day Notice from her adult daughter in early December 2013. The tenant testified that she did not receive the 10 Day Notice until December 19, 2013, when she found it attached to her door.

Based on the evidence before me and in accordance with section 88(e) of the *Act*, I find that the tenant was served with the 10 Day Notice on December 2, 2013, as stated by the landlord and as confirmed in the written Proof of Service document signed by the tenant's adult daughter.

The landlord entered sworn testimony and written evidence that he sent the tenant a copy of his dispute resolution hearing package, including a copy of his application for

dispute resolution, by registered mail on December 19, 2013. At that time, this hearing was scheduled for January 15, 2014 at 11:00 a.m. The landlord entered into written evidence copies of the Canada Post Tracking Number and Customer Receipt to confirm his registered mailing of his hearing package to the tenant on December 19, 2013. The landlord also testified that he checked with Canada Post and discovered that his hearing package was successfully delivered to the tenant.

Due to unforeseen circumstances, the Residential Tenancy Branch (the RTB) had to postpone the January 15, 2014 hearing and notify the landlord and tenant that the hearing had been rescheduled for January 17, 2014 at 10:00 a.m. Both parties confirmed that they had received this information of the revised hearing from the RTB. The tenant testified that the first notification she received of the landlord's application for dispute resolution and the January 15, 2014 hearing was when a representative of the RTB called her to postpone the hearing until January 17, 2014. She testified that she had not received any notification from Canada Post that there was a registered mail package waiting for her. She also denied having received the hearing package from the landlord.

Due to the conflicting evidence from the parties, I checked the Canada Post Online Tracking System to determine whether the landlord was correct in his assertion that his hearing package had been received by the tenant. Using the Canada Post Tracking Number provided by the landlord, the Online Tracking System revealed that the landlord's dispute resolution hearing package was successfully delivered to the tenant on December 20, 2013, at which time the tenant signed for acceptance of the hearing package. A copy of the tenant's signature was also evident on the Online Tracking System for this Tracking Number.

Based on a balance of probabilities and in accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package on December 24, 2014, the fifth day after its registered mailing.

#### 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 all or a portion of 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

The landlord entered written evidence that this periodic tenancy began on October 15, 2007. The tenant said that she actually began her tenancy on July 15, 2007. Monthly rent is currently set at \$550.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$262.50 security deposit, which the landlord said was paid on or about October 15, 2007.

The tenant testified that she paid \$500.00 of her December 2013 rent on December 24, 2013. She agreed that she has not paid the remaining \$50.00 of her December 2013 rent to the landlord. The landlord entered sworn testimony and written evidence that he accepted the tenant's \$500.00 payment on December 26, 2013 for occupancy only. He entered a copy of a receipt to that effect. The tenant testified that she paid another \$550.00 towards this tenancy on January 9, 2014. The landlord testified that this occurred on January 12, 2014, and gave undisputed sworn testimony that he issued the tenant a receipt that the payment was accepted for occupancy only.

The landlord applied for a monetary award of \$1,100.00. This amount included unpaid rent for December 2013 and January 2014, plus the filing fee for his application. However, as was outlined above, the landlord has accepted \$1,050.00 from the tenant since he filed his application for dispute resolution.

### Analysis

I find that the landlord's acceptance of payments of \$500.00 and \$550.00 for occupancy only did not reinstate this tenancy. I find that whether the tenant received the 10 Day Notice when the landlord maintained on December 2, 2013, or on December 19, 2013, as the tenant maintained, the tenant has failed to pay her December 2013 rent **in full** within five days of receiving the 10 Day Notice. 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 her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 12, 2013. However, as the landlord accepted the tenant's \$550.00 payment for January 2014, I find that the landlord has agreed to allow the tenant to occupy the rental unit until January 31, 2014. 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 by 1:00 p.m. on January 31, 2014, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed testimony and evidence of the parties, I find that \$50.00 in rent remains owing for December 2013. I issue a monetary award of \$50.00 in the

landlord's favour to allow the landlord to recover unpaid rent owing from December 2013. As the landlord has been successful in this application, I also allow the landlord to recover his \$50.00 filing fee from the tenant.

I allow the landlord to retain the \$100.00 monetary award issued in this decision from the tenant's security deposit plus applicable interest.

### Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on January 31, 2014. Should the tenant 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 amount of \$100.00 in the landlord's favour. In order to implement this monetary award, I allow the landlord to retain \$100.00 from the current value of the tenant's security deposit. The remaining value of the tenant's security deposit as of January 31, 2014, the end date for this tenancy, is hereby reduced from \$267.29 (i.e., \$262.40 plus applicable interest of \$4.79 until January 31, 2014 = \$267.29) to \$167.29.

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 17, 2014

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Residential Tenancy Branch

