



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
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.

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 tenant did not attend this hearing, although I waited until 11:12 a.m. in order to enable her to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on November 5, 2013. The landlord testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on November 29, 2013. She provided copies of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I am satisfied that the tenant has been deemed served with the 10 Day Notice on November 8, 2013, and the hearing package on December 4, 2013.

At the commencement of the hearing, the landlord testified that the tenant has made all outstanding payments toward this tenancy, all of which have been accepted by the landlord for use and occupancy only. The landlord withdrew the request for a monetary award, save for the recovery of the \$50.00 filing fee from the tenant. The landlord's application for a monetary award for unpaid rent is hereby withdrawn.

## Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to retain 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

This tenancy began on February 1, 2007 as a one-year fixed term tenancy. When the term of the tenancy expired, the tenancy continued as a periodic tenancy. Monthly rent is currently set at \$955.55, payable in advance on the first of each month. The landlord continues to hold the tenant's \$375.00 security deposit paid on January 27, 2007.

The landlord testified that the tenant did not pay the \$955.55 identified as owing in the 10 Day Notice of November 5, 2013 until November 29, 2013. The landlord entered into written evidence a copy of the rent ledger for this tenancy and copies of receipts issued to the tenant for "use and occupancy only" for payments made by the tenant since November 5, 2013. The landlord testified that she continued to seek an Order of Possession.

#### Analysis

I find that the payments accepted by the landlord since November 5, 2013 for use and occupancy only have not reinstated this tenancy nor have they demonstrated any willingness by the landlord to allow the tenant to continue occupying the rental unit after January 31, 2014. The tenant failed to pay the November 2013 rent in full within five days of being deemed to have received the 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 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 November 18, 2013. As that has not occurred, I find that the landlord is entitled to an Order of Possession to take effect by 1:00 p.m. on January 31, 2014, the date when the landlord's commitment to accept the payment for use and occupancy of the rental unit for January 2014 expires. 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.

As the landlord has been successful in this application, I allow the landlord a monetary award of \$50.00 to recover the landlord's filing fee.

#### Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at 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.

In order to implement the landlord's monetary award to recover the filing fee for this application, I order the landlord to retain \$50.00 from the tenant's \$375.00 security deposit. The revised value of the tenant's security deposit is reduced to \$325.00, plus applicable interest.

The landlord's application for a monetary award for unpaid rent is withdrawn.

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 22, 2014

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Residential Tenancy Branch

