



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant did not appear.

### Issue(s) to be Decided

- Was the Application for Dispute Resolution and Notice of Hearing properly served?
- Is the landlord entitled to an order of possession and, if so, upon what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?
- Is the landlord entitled to retain the security deposit?

### Background and Evidence

This one year fixed term tenancy commenced August 1, 2013. The monthly rent of \$1200.00 is due on the first day of the month. The tenant paid a security deposit of \$600.00.

The landlord testified that she served the 10 Day Notice to End Tenancy for Non-Payment of Rent on November 20, 2013, by leaving a copy with an adult person who said he was staying at the rental unit. This person told the landlord that the tenant was working in Kitimat. That document includes information advising the tenant that the notice is cancelled if the tenant paid the arrears of rent within five days. It also advises that the tenant has five days to dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The landlord testified that the tenant did neither.

When the landlord did not receive any payment she issued this Application for Dispute Resolution. On November 28 she went to the rental unit. This time she was met by a different adult person who also told her that the tenant was working in Kitimat and he was staying at the rental unit. She left the Application for Dispute Resolution and Notice of Hearing with this person. On both occasions, the landlord observed that the tenant's belongings were still in the rental unit.

Some time after she delivered the Application for Dispute Resolution, the person who accepted it from her paid \$1000.00 towards the rent.

The landlord testified that she has not received any payment since and the arrears, as of December 31, 2013 total \$1400.00.

The landlord testified that she has called and texted the tenant on numerous occasions but has never received any reply.

### Analysis

*Was the Application for Dispute Resolution and Notice of Hearing properly served?*

The *Residential Tenancy Act* provides that an application for dispute resolution may be served on a tenant in one of the following ways:

- by leaving a copy with the person;
- by sending a copy by registered mail to the address at which the person resides;
- by sending a copy by registered mail to a forwarding address provided by the tenant; or,
- as ordered by an arbitrator.

In addition to these methods of service the *Act* provides that an application for dispute resolution that is asking for an order of possession may also be served by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant.

Section 71(2) allows an arbitrator to order that a document has been sufficiently served for the purposes of the *Act* on a date the arbitrator specifies or that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of the *Act*.

Having considered that facts that the tenant has not given the landlord any information as to his whereabouts, that his possessions remain in the rental unit; that the tenant is apparently allowing other persons to reside in his home; and that the landlord has made numerous attempts to contact the tenant, I order that the application for a monetary order was sufficiently served for the purposes of the *Act* when it was delivered to the adult person who is apparently residing with the tenant.

*Is the landlord entitled to an order of possession and, if so, upon what terms?*

The tenant did not pay the arrears in full nor did he not apply to dispute the Notice within the five day period. He is therefore conclusively presumed under section 46(5) of the *Residential Tenancy Act* to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order of possession effective two days after service on the Tenant.

*Is the landlord entitled to a monetary order and, if so, in what amount?*  
*Is the landlord entitled to retain the security deposit?*

I award the landlord the sum of \$1400.00 for the arrears of rent owed to December 31, 2013.

I also award the landlord the sum of \$600.00 for the unpaid rent to January 15, 2014. If the landlord is unable to rent the unit by January 15 and suffers an additional loss of income the landlord may file another application for dispute resolution for any loss of rental income, as well as any other claims she may have for cleaning or damages.

In summary, I find that the landlord has established a total monetary claim of \$2050.00 comprised of unpaid rent to January 15, 2014 in the amount of \$2000.00 and the \$50.00 fee paid by the landlord for this application. Pursuant to section 72 I order that the landlord retain the deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1450.00.

#### Conclusion

- a. An order of possession effective two days after service on the tenant has been granted. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. A monetary order in favour of the landlord in the amount of \$1450.00 has been granted. If necessary, it may be filed in the Provincial Court (Small Claims) 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: January 08, 2014

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Residential Tenancy Branch

