



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DECKER RESIDENCE LTD. d.b.a. DECKER RESIDENCE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR OPC MNR MNSD FF

### Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord wrote "*Landlord request order of possession and monetary award for rent not paid etc.*"

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as he clearly indicated his intention of seeking to recover the payment for all rent not paid, even for occupancy past the effective date of the eviction notices. Therefore I amend their application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* pursuant to section 64(3)(c) of the Act.

### Introduction

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

The Landlord testified that the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the first package of the Landlord's evidence, on December 11, 2013, by registered mail. Canada Post receipts were provided in the Landlord's testimony. The Landlord also had evidence that the Tenant signed for the registered mail package on December 13, 2013. The second package of evidence consisting of rent receipts were personally served to the Tenant on approximately January 3, 2014. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, accordance with the *Residential Tenancy 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 submitted documentary evidence which included a copy of the 10 Day Notice to end tenancy for unpaid rent issued October 2, 2013, a 1 Month Notice issued for Cause dated October 24, 2013, a Notice of Rent Increase dated September 28, 2012, the tenancy agreement, and rental receipts issued for "use and occupation".

The tenancy agreement indicates the parties entered into a written month to month tenancy that began on October 1, 2008. Rent began at \$395.00 and has subsequently been increased over the years to \$425.00. A notice of rent increase was personally served to the Tenant on September 28, 2013, which increased the rent from \$412.00 to \$425.00 per month, effective January 1, 2013. The Tenant paid \$187.50 on or before October 1, 2008, as the security deposit.

The Landlord testified that the Tenant has refused to pay the increased rent since the effective date of the Notice of Rent Increase. At the time they issued the 10 Day Notice in October she had an outstanding balance due of \$168.00. As of February 2, 2014 the Tenant's accumulated balance owing is \$220.00 (\$168.00 + \$13.00 for Nov, Dec, Jan, and Feb 2014). The Landlord confirmed they personally served the Tenant a 1 Month Notice for repeated late payment of rent on October 24, 2012, and an older version of the 10 Day Notice on October 2, 2013.

The Landlord stated that the Ministry of Social Development pays \$412.00 of the Tenant's rent and he has already accept the February 2014 rent and issued the Tenant receipt # 703504 for "use and occupation" for February. Therefore, he is requesting an Order of Possession effective February 28, 2014 and the monetary Order.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

When a tenant receives a 1 Month Notice to end tenancy for cause they have (10) days to make application to dispute the Notice or the tenancy ends.

In this case the Tenant was served the Notice on October 24, 2013, and the effective date of the Notice is **November 30, 2013**, in accordance with section 47 of the Act. The Tenant 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 47(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

As I have granted the Order of Possession based on the 1 Month Notice, there is no need to analyze the 10 Day Notice.

The Landlord claimed unpaid rent of \$181.00 which was due as of November 1, 2013 (\$168.00 + \$13.00). The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$181.00**.

As noted above this tenancy ended **November 30, 2013**, in accordance with the 1 Month Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for unpaid amounts owing for December 2013, January 2014, and February 2014, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent up to February 28, 2014, in the amount of **\$39.00**.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

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

### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **February 28, 2014**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$270.00** (\$181.00 + \$39.00 + \$50.00). 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: February 03, 2014

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Residential Tenancy Branch

