



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Maples Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on January 15, 2014 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; on the 5<sup>th</sup> day after mailing. The tenant did not appear at the hearing.

### Issue(s) to be Decided

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

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the security deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

### Preliminary Matters

The landlord was unable to establish the amount of security deposit paid; therefore the landlord will continue to hold any deposit and disburse that deposit in accordance with the Act.

### Background and Evidence

The tenancy commenced on December 1, 2006; rent is due on the 1<sup>st</sup> day of each month. The landlord supplied a copy of the application for tenancy; a copy of the tenancy agreement was not available.

A copy of a Notice of rent increase issued on October 23, 2013 indicated rent was currently \$781.00 per month, increasing to \$808.00 effective February 1, 2014.

The landlord stated that on January 3, 2014 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of January 13, 2014 was served by posting to the tenant's door at approximately 9 a.m. The Notice was removed from the door by 6 p.m.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,274.00 within 5 days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within 5 days.

The landlord stated the tenant did not pay \$483.00 in December, 2013; \$791.00 in January 2014 and has not paid \$808.00 owed February 1, 2014. The tenant remains in the rental unit.

The landlord supplied copies of rent receipts indicating the sum paid up to December 2013.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3<sup>rd</sup> day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on January 6, 2014.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on January 6, 2014, I find that the earliest effective date of the Notice is January 16, 2014.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was January 16, 2014.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on January 16, 2014, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; January 16, 2014.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$2,082.00 from December 2013 to February 2014, inclusive and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order in the sum of \$2,132.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent.

The landlord is entitled to filing fee costs.

The landlord continues to hold any security deposit that may have been paid.

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 07, 2014

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Residential Tenancy Branch

