



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, MND, MNSD, 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, compensation for damage to the unit, compensation for 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 landlord provided affirmed testimony that on January 27, 2014 at approximately 6 p.m. he personally served copies of the Application for Dispute Resolution and Notice of Hearing to the tenant, at the rental unit.

These documents are deemed to have been served on the day of personal delivery, in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matters

The landlord withdrew the claim for unpaid rent as the tenant did pay the sum owed for December 2013 and January 2014.

The landlord withdrew the claim for damage and has leave to reapply.

### Issue(s) to be Decided

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

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

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on September 1, 2013, rent is \$825.00, due on the 1<sup>st</sup> day of each month. A security deposit in the sum of \$412.50 was paid. A copy of the tenancy agreement was supplied as evidence.

On January 5, 2014 the landlord personally served the tenant with a 10 day Notice to end tenancy for unpaid rent. The Notice had an effective date of January 15, 2014.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,700.00 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.

On January 24, 2014 the tenant paid \$1,700.00. The landlord issued a receipt for use of the unit only.

The tenant did not pay February rent and on February 9, 2014 a 2<sup>nd</sup> Notice was issued and served. Partial February rent has now been paid.

### Analysis

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenant received the Notice to end tenancy on January 5, 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 5, 2014, I find that the earliest effective date of the Notice is January 15, 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 15, 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 all of 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 15, 2014. The tenant was required to pay the rent no later than January 10, 2014.

As the landlord's application has merit, I find that the landlord is entitled to retain the \$50.00 filing fee from the security deposit. The landlord will then be holding a deposit in the sum of \$362.50 which must be disbursed in accordance with the Act.

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.

### Conclusion

The landlord is entitled to an Order of possession.

The landlord may retain the filing fee cost from the security deposit and will continue to hold the balance of the deposit, in the sum of \$362.50.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 27, 2014

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Residential Tenancy Branch