



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, 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 and for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:12 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:00 p.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 provided witnessed written evidence and sworn testimony that he handed the tenant a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on January 1, 2014 at 7:49 p.m. The landlord provided witnessed written evidence and sworn testimony that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door at 4:20 p.m. on January 6, 2014. In accordance with sections 88 and 90 of the *Act*, I am satisfied that the 1 Month Notice was served to the tenant on January 1, 2014, and that the 10 Day Notice was deemed served to the tenant on January 9, 2014, the third day after its posting.

The landlord gave written and oral evidence that he sent both tenants a copy of his dispute resolution hearing package by registered mail on January 16, 2014. The landlord entered into written evidence documentation from Canada Post to confirm the tracking numbers on these registered mailings. In accordance with sections 89 and 90 of the *Act*, the hearing packages were deemed served to the tenants on January 21, 2014, the fifth day after their registered mailing.

At the commencement of this hearing, the landlord testified that he was uncertain as to whether the tenants have abandoned the rental unit. He said that the police had to attend the premises on January 24, 2014 and had to break the door of the rental unit to check on the safety of the tenant(s). He said that he believes that the tenants have abandoned the rental unit. He requested an Order of Possession to be used in the event that the tenants continue to reside in the rental unit.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

This periodic tenancy commenced on November 1, 2013 on the basis of an oral agreement between the parties. Monthly rent is set at \$850.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$425.00 security deposit paid on October 28, 2013.

The landlord testified that the tenants have not paid anything further to the landlord since the landlord issued the 10 Day Notice. The landlord applied for a monetary award of \$850.00 for unpaid rent owing from January 2014. He said that he planned to post a 24-hour inspection notice on the tenants' door to determine whether the tenant(s) continue to reside in the rental unit or whether the premises have been abandoned as he believes is the case.

#### Analysis

The tenants failed to pay the January 2014 rent in full within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days leads to the end of their tenancy on the effective date of the notice. In this case, this requires the tenants to vacate the premises by February 20, 2014. I am granting the landlord a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by at least 1:00 p.m. on February 20, 2014, the landlord may enforce this Order in the Supreme Court of British Columbia.

Although the landlord identified February 2, 2014 as the effective date on the 1 Month Notice, the earliest date that a 1 Month Notice issued by the landlord on January 1,

2014 could take effect would be February 28, 2014. As that date is after the effective date stated on the 10 Day Notice which I find valid and of effect, I have not considered the landlord's 1 Month Notice.

I find that the landlord is entitled to a monetary award of \$850.00 for unpaid rent owing from January 2014. I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable. I allow the landlord to recover his \$50.00 filing fee from the tenants.

### Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on February 20, 2014. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee and to retain the security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid January 2013 Rent	\$850.00
Less Security Deposit	-425.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$475.00</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 07, 2014

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Residential Tenancy Branch

