



# 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 was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that on February 13, 2014 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenant. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*; however 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; to a monetary Order for unpaid rent; and to keep all or part of the security deposit?

### Background and Evidence:

The Landlord stated that this tenancy began on September 18, 2013; that the Tenant agreed to pay monthly rent of \$625.00 by the first day of each month, with the exception of September, for which she agreed to pay \$229.00; and that the Tenant paid a security deposit of \$312.50.

The Landlord stated that the Tenant paid rent of \$138.50 for September and that she has not paid any rent since that time, although she is still occupying the rental unit.

The Landlord stated that on January 10, 2014 she personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 20, 2014. The Notice declared that the Tenant owed \$625.00 in rent that was due on December 01, 2013.

### Analysis

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay rent of \$229.00 for September of 2013 and \$625.00 for every month thereafter.

Based on the undisputed evidence, I find that the Tenant had only paid \$138.50 in rent for the period between September 18, 2013 and January 01, 2014. As she was obligated to have paid \$2,729.00 in rent for this period, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,590.50 in outstanding rent to the Landlord.

A landlord has the right to end a tenancy if rent is not paid when it is due, pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that on January 10, 2014 the Tenant was served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by January 20, 2014, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit by January 20, 2014, I find that she is obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. As she has already been ordered to pay rent for the period between January 20, 2014 and January 31, 2014, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the month of February, in the amount of \$625.00, and the 25 days in March that she remained in possession of the rental unit, at a daily rate of \$20.16, which equates to \$504.00.

I find that the Tenant fundamentally breached the tenancy agreement when she did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when she did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that her continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for the remainder of March. I therefore find that the Tenant must compensate the Landlord for the loss of revenue she will likely experience for the remainder of March, which is \$121.00.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon 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.

The Landlord has established a monetary claim, in the amount of \$3890.50, which is comprised of \$3,840.50 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to retain the Tenant's security deposit of \$312.50 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,578.00. 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.

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: March 25, 2014

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Residential Tenancy Branch

