



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Brown Bros. Agencies Limited  
and [tenant name suppressed to protect privacy]

## **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.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Agent for the Landlord stated that on January 24, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to the Tenant at the rental unit, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

### Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent/lost revenue; and to keep all or part of the security deposit?

### Background and Evidence:

The Landlord and the Tenant agree this tenancy began on August 01, 2013; that the Tenant is required to pay monthly rent of \$785.00 and parking fees of \$15.00 by the first day of each month; and that the Tenant paid a security deposit of \$392.50.

The Landlord and the Tenant agree that the Tenant has paid \$977.00 in rent for the period between November 01, 2013 and March 12, 2014.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which has an effective date of December 20, 2013, was posted on the door of the rental unit on December 07, 2013. The Tenant acknowledged locating the Notice of her door, although she cannot recall the date. The Landlord submitted a Proof of Service of the Ten Day Notice to End Tenancy, in which the building manager declared that she posted the Notice on the Tenant's door on December 07, 2013.

The parties agree the unit has not yet been vacated. The Collections Officer stated that there was a \$10.00 credit on the Tenant's account on November 01, 2013.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$785.00 by the first day of each month; that the Tenant did not pay the \$785.00 in rent that was due on November 01, 2013; and that the Tenant did not pay the \$785.00 in rent that was due on December 01, 2013.

As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Residential Tenancy Act (Act)*, I find that the Tenant must pay \$1,570.00 in outstanding rent to the Landlord.

Section 46 of the *Act* authorizes a landlord to end a tenancy if a tenant does not pay rent when it is due. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy was posted on the door of the rental unit on December 07, 2013, which was served pursuant to section 46 of the *Act*.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on December 10, 2013.

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 ended on the effective date of the Notice, which was December 20, 2013. 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 December 20, 2013, 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 December 21, 2013 and December 31, 2013, I find that the Landlord has been fully compensated for that period.

I find that the Tenant must also compensate the Landlord for the entire months of January and February of 2014. As she paid the Landlord \$977.00 in rent in January, I find that she must pay the Landlord another \$593.00 in rent for these months, given that she occupied the unit during these months.

I find that the Tenant must also compensate the Landlord for the first 12 days in March of 2014, as occupied the unit on those days. I find that she must pay a daily rate of \$25.32, which equates to \$303.84.

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 his continued occupancy of the rental unit made it difficult, if not impossible, for the Landlord to find new tenants for March of 2014. I therefore find that the Tenant must compensate the Landlord for the loss of revenue the Landlord will likely experience for the remainder of March, which is \$481.16.

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.

I note that I have not applied the \$10.00 credit the Collections Officer was on the Tenant's account. The Landlord is at liberty to refund this credit to the Tenant or to apply it to money owed for parking.

### 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 \$2,998.00, which is comprised of \$2,948.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the security deposit of \$392.50 in partial satisfaction of this claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,605.50. 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 12, 2014

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Residential Tenancy Branch

