



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on February 17, 2014. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on May 1, 2005 as a month to month tenancy. Rent is \$475.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$300.00 on May 1, 2005.

The Landlord said that the Tenant had unpaid rent in the amount of \$901.32 up to January 7, 2014 so the Landlord posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 7, 2014 on the door of the Tenant's rental unit. The Landlord said the Tenant has made some payments and the Landlord issued receipts for the payments for "use and occupancy only". The Landlord said he did not re-estate the tenancy when the Tenant made payments of \$575.00 on March 10 and March 25, 2014. The Landlord said the Tenant now has unpaid rent of \$558.98 up to March 25, 2014 and the April, 2014 rent of \$475.00 is also unpaid.

The Landlord said he wants to end the tenancy and the Landlord requested an Order of Possession for April 30, 2014 if his application is successful.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

The Tenant said she had health issues in October and November, 2013 which resulted in her not meeting her rent payment obligations. The Tenant said her rent is \$475.00 and she had made an arrangement to pay an additional \$100.00 per month to catch up on unpaid rent from a previous dispute resolution hearing. The Tenant agreed that there was \$558.98 in unpaid rent as at March 25, 2014, but the Tenant thought the April, 2014 rent was paid by the Ministry. The Landlord said the Ministry cheques dated March 10 and March 25, 2014 both went to rent arrears not to the April, 2014 rent payment.

The Tenant requested the Landlord to consider another repayment schedule as they had agreed to in the prior hearing of April, 2013. The Landlord said he could not agree to that, but the Tenant could make an appeal to the Board of Directors and the Landlord said he would provide the Tenant with the information of how to do that.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on January 20, 2014. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than January 30, 2014.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect April 30, 2014 at 1:00 p.m.

I also find that the Landlord is entitled to recover unpaid rent for in the amount of \$558.98 for unpaid rent prior to March 25, 2014 and \$475.00 for the unpaid April, 2014 rent.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,033.98	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,083.98
Less:	Security Deposit	\$300.00	
	Accrued Interest	\$ 10.62	
	Subtotal:		\$ 310.62
	Balance Owing		\$ 773.36

### Conclusion

An Order of Possession effective April 30, 2014 at 1:00 p.m. and a Monetary Order in the amount of \$773.36 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: April 07, 2014

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Residential Tenancy Branch

