



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

The tenant did not attend this hearing, although I waited until 3:17 p.m. in order to enable him to connect with this teleconference hearing scheduled for 3:00 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 testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on March 4, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on March 7, 2014, the third day after its posting. The landlord testified that he sent the tenant a copy of the landlord's dispute resolution hearing package and written evidence by registered mail on March 26, 2014. He provided the Canada Post Tracking Number for this registered mailing. He testified that Canada Post returned this package to the landlord as unclaimed by the tenant. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's hearing package and written evidence on March 31, 2014, the fifth day after its mailing.

The landlord testified that the landlord has accepted payments for use and occupancy only for March and April 2014, but as yet there had been no payments from the tenant for May 2014. The landlord reduced the amount of his requested monetary award from \$2,490.00 to \$1,220.00, the amount owing at the time of this hearing.

### 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 the

tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord entered into written evidence a copy of the one-year fixed term Residential Tenancy Agreement (the Agreement) signed by both parties on July 11, 2013. According to the terms of the Agreement, the tenancy was to begin on August 1, 2013, and end by July 31, 2014. Monthly rent was set at \$1,180.00. The tenant was also to pay the landlord \$40.00 each month for parking. The landlord continues to hold the tenant's \$590.00 security deposit paid on July 11, 2013.

The landlord gave sworn oral testimony that the tenant paid \$600.00 of the \$1,220.00 identified as owing in the 10 Day Notice on March 25, 2014, by debit. The landlord also said he received another \$350.00 debit payment on March 25, 2014, and a final payment of \$270.00 on March 27, 2014. He testified that each of these payments were accepted by the landlord for use and occupancy only.

The tenant gave sworn oral testimony and entered written evidence that the landlord accepted a payment of \$1,220.00 from the tenant for the amounts that came owing on April 1, 2014 on May 6, 2014. The landlord's written evidence showed that the landlord issued a written receipt for this payment, accepted for "use and occupancy only." The landlord testified that no further payments have been received from the tenant.

### Analysis

I find that the landlord's acceptance of payments from the tenant for use and occupancy only has not reinstated this tenancy. I find that there is undisputed evidence that the tenant failed to pay all of monthly rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenant has 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 tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 17, 2014. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that there is undisputed sworn testimony that the tenant has not paid \$1,180.00 in rent that became due on May 1, 2014. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. As \$1,180.00 is the monthly rent established in the Agreement, I find that the landlord is entitled to a monetary award of \$1,180.00 for unpaid rent owing from May 2014.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period. As the landlord has been successful, I find that the landlord is entitled to recover his filing fee from the tenant.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 owing from this tenancy and the filing fee, and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent May 2014	\$1,180.00
Less Security Deposit	-590.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$640.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: May 12, 2014

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Residential Tenancy Branch

