



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord.

The landlord provided documentary evidence the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on March 28, 2014 at 4:00 p.m. in accordance with Section 89 and that this service was witnessed by a third party.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and utilities; to a monetary order for unpaid rent and utilities; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the tenancy began as a month to month tenancy beginning on October 1, 2013 for the monthly rent of \$650.00 plus hydro due on the 1<sup>st</sup> of each month and a security deposit of \$270.00 was paid.

The landlord provided into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on March 22, 2014 with an effective vacancy date of April 1, 2014 due to \$90.00 in unpaid rent and \$191.18 for utilities.

The landlord submits the tenant failed to pay the full rent owed for the month of February 2014 or utilities in the amount of \$191.18 that the landlord expected payment for on February 21, 2014 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent personally on March 22, 2014 at 6:00 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord submits the tenant has failed to pay rent for the months of April and May 2014.

In addition the landlord seeks compensation for a payment that was made by cheque to the landlord by the tenant for hydro usage for the period of October and November 2013 and was returned to the landlord as insufficient funds. The payment was in the amount of \$113.12. The landlord submitted in evidence a copy of the returned cheque. The landlord seeks an additional \$252.59 for hydro for the period of February and March 2014

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on March 22, 2014 and the effective date of the notice was April 1, 2014. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Section 46(6) of the *Act* states that a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Based on the landlord's undisputed testimony and the copy of the tenant's cheque for hydro I find the tenancy agreement required the tenant to pay hydro utilities to the landlord. I accept also that the landlord had provided written notice of the demand for payment and that it was at least 30 days prior to the landlord issuing the Notice to End Tenancy.

Also based on the landlord's undisputed testimony I find the tenant has failed to pay the utilities for the period of October and November 2013 in the amount of \$113.12; for the period of December 2013 and January 2014 in the amount of \$191.18; and for the period of February and March 2014 in the amount of \$252.59.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,996.89** comprised of \$1,390.00 rent owed; \$556.89 hydro owed; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$325.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,671.89**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 15, 2014

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Residential Tenancy Branch

