



# 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 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that the landlord handed her the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on March 10, 2014. The tenant also confirmed that the landlord handed her a copy of the dispute resolution hearing package on April 2, 2014. Based on the sworn testimony of the parties, I find that the landlord served the above documents and her written evidence package to the tenant in accordance with sections 88 and 89 of the *Act*.

### 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 and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of 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

On June 1, 2013, the parties signed a one-year fixed term tenancy agreement that commenced on June 1, 2013. Monthly rent is set at \$2,800.00, payable in advance on

the first of each month, plus utilities. The landlord continues to hold the tenant's \$1,400.00 security deposit paid on May 31, 2013.

The landlord's application for a monetary award of \$8,450.00 included unpaid rent of \$2,800.00, then owing from March 2014, and an additional \$2,800.00 anticipated loss of rent for each of April and May 2014. The landlord gave undisputed sworn testimony that the tenant has not made any payments since she handed the tenant the 10 Day Notice. The landlord gave undisputed sworn testimony that \$2,800.00 remains owing for each of March, April and May 2014. The landlord also applied for an Order of Possession and the recovery of her \$100.00 filing fee.

The tenant said that she plans to move out of the rental unit by June 30, 2014. She said that she expects to receive sufficient funds within the next two weeks to pay all of her outstanding rent and her June 2014 rent. She requested permission to remain in the rental unit until June 30, 2014, providing she pays her outstanding rent within 10 days.

#### Analysis

The tenant failed to pay the amount identified in the 10 Day Notice in full within five days of receiving the 10 Day 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 her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 20, 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.

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. I find that there is undisputed evidence that the tenant continues to owe monthly rent for each of March, April and May 2014. I issue a monetary Order in the landlord's favour to compensate the landlord for unpaid rent owing for each of these three months. I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in her application, I allow her to recover her 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 and the filing fee and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid March 2014 Rent	\$2,800.00
Unpaid April 2014 Rent	2,800.00
Unpaid May 2014 Rent	2,800.00
Less Security Deposit	-1,400.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$7,100.00</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 23, 2014

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Residential Tenancy Branch

