



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNSD MNDC O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 21, 2014, by the Landlord to obtain an Order of Possession and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the scheduled teleconference hearing. The Landlord testified that the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on May 21, 2014, by registered mail and a copy of the Notice of Hearing was placed in the Tenant's. Canada Post tracking information was provided in the Landlord's testimony. The Landlord stated that Canada Post posted the notice to pick up the registered mail to the Tenant's door, which the Landlord took a picture of. He stated that based on the Canada Post tracking website the package is unclaimed.

The Landlord's documentary evidence consisted of a copy of the signed tenancy agreement and the one month extension to the lease. The Landlord stated the Tenant was provided copies of these documents when they were first signed.

The Tenant testified that he did not pick up the registered mail because he works out of town and he normally received very little mail.

Based on the foregoing, I find the Tenant was deemed served notice of this proceeding, and the evidence, on May 26, 2014, five days after they were mailed, in accordance with section 90 of the Act. I accepted the Landlord's evidence as it would not be prejudicial to the Tenant, as he had received copies of these documents at the time he signed them.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on May 1, 2013 and was scheduled end in 12 months, on April 30, 2013 [sic]. The Tenant was required to pay rent of \$1,150.00 on the first of each month and on April 22, 2013 the Tenant paid \$575.00 as the security deposit. On April 29, 2014 the parties entered into a written agreement to extend the lease for one month from May 1, 2014 to May 31, 2014.

The Landlord submitted that when they entered into the one month lease extension they both understood and agreed that all the tenancy clauses stayed the same and the Tenant was required to vacate the rental unit at the end of the extension.

The Landlord testified that on May 20, 2014 he contacted the Tenant to make arrangements to schedule the move out inspection. He said the Tenant responded by sending him a threatening text message which said that the Tenant would not move out until the Landlord had a court order. The Landlord said he attempted to speak with the Tenant but he refused to speak to him after that text was sent.

The Landlord stated that the Tenant paid him the May 2014 rent at the time they signed the lease extension; however, no rent has been paid for June or July 2014. The Landlord had entered into a written tenancy agreement with the replacement tenant for rent of \$1,300.00; therefore, the Landlord is claiming two months lost rent of \$2,600.00 (\$1,300.00 x 2).

The Tenant testified that he never sent a threatening text message to the Landlord. He confirmed that he is still residing in the rental unit and that no rent has been paid for June or July 2014. The Tenant argued that the Landlord has made no effort to collect the rent and that is why it has not been paid. He went on to state that he decided to be "contact free" from the Landlord, once he received the Notice of Hearing; which he clarified as being that he chose not to have contact with the Landlord until the hearing.

The Tenant stated that he remains in the rental unit because he entered into a verbal agreement with the Landlord to continue his agreement on a month to month tenancy once the lease expired. The Tenant then stated that he had requested a six month lease extension but the Landlord said he would only agree to an 8 month lease for a much higher rent. The Tenant argued that the Landlord agreed to the lease extension and then the next day the Landlord told him he had new tenants who signed a lease so he would have to move out.

In closing, The Landlord denied entering into a verbal agreement to extend the Tenant's lease. He confirmed that the Tenant had requested a six month extension and that he told the Tenant he could only allow an eight month extension which he verbally agreed to with another prospective tenant. The Landlord stated that the new tenant signed a lease the next day for the eight month period and that he informed the Tenant the next day.

### Analysis

Section 44(1)(b) of the Act stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy or 44(1)(c) when the landlord and tenant agree in writing to end the tenancy.

In this case the undisputed evidence was that the parties entered into a written fixed term tenancy agreement that originally ended on April 30, 2014, but was extended to May 31, 2014, by mutual agreement of the Landlord and Tenant.

The Tenant alleged that they entered into a verbal agreement to extend the tenancy and the Landlord denied entering into a verbal agreement.

In the case of verbal testimony when one party submits their version of events, in support of their position, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the submission would fail to meet this burden.

In this case the undisputed documentary evidence supports that the parties mutually agreed, in writing, to extend this tenancy until May 31, 2014, and that at that time the tenancy would end and the Tenant would be required to vacate the property. Therefore, in the absence of any proof that the parties agreed to enter into a subsequent six or eight month lease, I find this tenancy ended **May 31, 2014**. Accordingly, I grant the Landlord an Order of Possession.

As noted above this tenancy ended **May 31, 2014**, in accordance with the lease extension agreement. Therefore, I find the Landlord is seeking money for use and occupancy of the unit for June and July 2014, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and then will have to work to find replacement tenants. The Landlord did not submit documentary evidence that proves he entered into a written agreement for higher rent with new a tenant; therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire months of June and July, 2014, in the amount of **\$2,300.00** (\$1,150.00 x 2).

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Use & Occupancy June and July 2014	\$2,300.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$2,350.00</b>
<b>LESS:</b> Security Deposit \$575.00 + Interest 0.00	<u>-575.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,775.00</u></b>

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$1,775.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: July 14, 2014

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Residential Tenancy Branch

