



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bayside Management Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

OPR, MNR, MNSD, MNDC, O, FF

### Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, to recover the fee for filing this Application for Dispute Resolution, and for "other".

The Agent for the Landlord stated that on May 18, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to each Tenant, via registered mail, at the rental unit. The Agent for the Landlord cited two tracking numbers that corroborates this testimony. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however neither Tenant appeared at the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent, late fees, or NSF fees; and to keep all or part of the security deposit?

### Background and Evidence

The Agent for the Landlord stated that this tenancy began on January 01, 2014; that the Tenant was required to pay monthly rent of \$700.00 by the first day of each month; and that the Tenant paid a security deposit of \$350.00.

The Agent for the Landlord stated that the Tenant tendered a rent cheque for April, in the amount of \$700.00, and that this check was returned by the Tenant's financial institution for insufficient funds. She stated that on May 30, 2014 the Tenant paid \$1,200 in rent, leaving arrears for May in the amount of \$200.00.

The Agent for the Landlord stated that \$375.00 in rent has been paid for June and \$375.00 in rent has been paid for July.

The Landlord is also seeking compensation, in the amount of \$75.00, as the Tenant did not pay rent when it was due on April 01, 2014, May 01, 2014, and June 01, 2014. In the addendum to the tenancy agreement, which was submitted in evidence, the Tenant agreed to pay a fee of \$25.00 whenever the Tenant is late paying rent.

The Landlord is also seeking compensation, in the amount of \$25.00, as the Tenant tendered a NSF cheque for rent for April.

The Caretaker stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of May 02, 2014, was posted on the door of the rental unit on April 25, 2014. The Notice declared that the Tenant owed \$700.00 in rent that was due on April 01, 2014.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$700.00 by the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

On the basis of the undisputed evidence, I find that the Tenant did not pay rent for April or May until May 30, 2014, at which time rent of \$1,200.00 was paid. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay the remaining \$200.00 in rent that was due for May of 2014.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days, by providing proper written notice. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on April 25, 2014.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on April 28, 2014.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on April 28, 2014, I find that the earliest effective date of the Notice was May 08, 2014.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was May 08, 2014.

Section 46 of the *Act* stipulates that a Tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession. As the Tenant has paid \$375.00 in rent for July, the effective date of the Order of Possession will be July 15, 2014.

As the Tenant did not vacate the rental unit on May 08, 2014, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between May 08, 2014 and May 31, 2014, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the month of June as the Tenant remained in possession of the rental unit for that entire month. As the Tenant has already paid \$375.00 in rent for June, I find that the Tenant must pay an additional \$325.00 for June.

As the Tenant did not pay her rent when it was due on April 01, 2014 and May 01, 2014 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to late fees of \$50.00 for those two months.

As the Tenant was obligated to vacate the rental unit prior to June 01, 2014, I find that rent was not "due" on June 01, 2014. As rent was not due on that date, I find that the Tenant is not obligated to pay a late fee for not paying rent "on time" for June.

Section 7(1)(d) of the Regulation stipulates that a landlord can charge a fee of not more than \$25.00 for a NSF fee. Section 7(2) of the Regulation stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

The addendum to this tenancy agreement provides for a \$30.00 NSF fee, which is not authorized by the Regulation. I find that term of the addendum requiring the Tenant to pay \$30.00 for a NSF fee does not comply with the legislation and therefore I dismiss the Landlord's application for this fee. To be enforceable, the tenancy agreement must stipulate that the Tenant agrees to a NSF fee of \$25.00 or less.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

I grant the Landlord an Order of Possession that is effective **1:00 p.m. on July 15, 2014**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, **in the amount of \$625.00**, which is comprised of \$525.00 in unpaid rent, \$50.00 in late fees and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$350.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$275.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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 03, 2014

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Residential Tenancy Branch

