



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened 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, and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Agent for the Landlord stated that on August 27, 2014 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

### Issue(s) to be Decided

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

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 01, 2014; that the Tenant agreed to pay monthly rent of \$775.00 by the first day of each month; and that the Tenant paid a security deposit of \$387.50.

The Landlord and the Tenant agree that the Tenant did not pay all of the rent that was due on July 01, 2015. The parties agree that by the end of August of 2014, the Tenant owed \$1,300.00 in rent.

The Landlord and the Tenant agree that the Tenant paid no rent in September of 2014.

The Landlord and the Tenant agree that the Tenant paid \$775.00 in rent for October of 2014.

The Tenant stated that he paid an additional \$200.00 in rent on October 17, 2014. The Agent for the Landlord stated that he does not have a record of that payment but he does not doubt that it has been paid.

During the hearing the Agent for the Landlord and the Tenant both stated that they believe \$1,975.00 is currently due for rent.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of July 17, 2014, was posted on the door of the rental unit on July 01, 2014. The Tenant stated that he believes he received this Notice on July 01, 2014. The parties agree that this Notice was not signed by the Landlord or an agent for the Landlord.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of August 18, 2014, was posted on the door of the rental unit on August 02, 2014. The Tenant stated that he believes he received this Notice in early August of 2014. The parties agree that this Notice was not signed by the Landlord or an agent for the Landlord.

The Landlord is also seeking compensation, in the amount of \$50.00, for two NSF charges from July and August of 2014. In the tenancy agreement, which was submitted in evidence, the Tenant agreed to pay a fee of \$25.00 whenever a rent payment is returned due to insufficient funds. The Landlord and the Tenant agree that the rent payment for July and August was not honoured by the Tenant's financial institution due to insufficient funds.

### 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 \$775.00 by the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord when it is due.

On the basis of the undisputed evidence and the Statement of Account submitted in evidence, I find that at the end of August of 2014, the Tenant owed \$1,300.00 in rent.

As the parties agree no rent was paid for September of 2014, I find that at the end of September of 2014, the Tenant owed \$2,075.00 in rent.

As the parties agree rent was paid for October of 2014 and that the Tenant paid an additional \$200.00 towards the rental arrears in October, I find that the Tenant currently

owes rent of \$1,875.00. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,875.00 in outstanding rent to the Landlord.

Although both the Landlord and the Tenant stated that the Tenant currently owes \$1,975.00 in rent, the evidence does not support that testimony. I am therefore unable to conclude that the Tenant owes any more than \$1,875.00 in rent.

On the basis of the undisputed evidence, I find that an unsigned Ten Day Notice to End Tenancy was posted on the door of the rental unit on July 01, 2014 and a second unsigned Ten Day Notice to End Tenancy was posted on the door of the rental unit on August 02, 2014.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving a notice to end tenancy. Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(a) of the *Act* stipulates that to be effective a notice to end tenancy must be signed and dated by the landlord or the tenant giving the notice.

In the circumstances before me neither of the Ten Day Notices to End Tenancy that are the subject of this dispute have been signed. I therefore find that neither Notice is effective, as the Landlord did not comply with section 52(a) of the *Act*. As neither Notice is effective, I dismiss the Landlord's application for an Order of Possession.

On the basis of the undisputed evidence, I find that the rent payment for July and August was not honoured by the Tenant's financial institution due to insufficient funds. As the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever a payment is not honoured due to insufficient funds, I find that the Landlord is entitled to NSF fees of \$50.00 for July and August of 2014.

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

### Conclusion

The Landlord has established a monetary claim, in the amount of \$1,975.00, which is comprised of \$1,875.00 in unpaid rent, \$50.00 in NSF fees, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,975.00. 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.

As this tenancy has not yet ended, I dismiss the Landlord's application to retain the security deposit. If the monetary Order is not paid by the end of the tenancy, the Landlord has the right to retain the deposit in accordance with section 38(3) of the *Act*.

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: October 20, 2014

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Residential Tenancy Branch

