



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MND, MNR, FF, CNR

### 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 damage to the unit pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

This hearing dealt with the tenant's application pursuant to the Act for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

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 testified that she served the landlord with her dispute resolution package on 18 November 2014 by posting the package to the landlord's door. The landlord did not dispute this service. Pursuant to subsection 89(1), posting the dispute resolution package to the door is not an accepted method of service for this type of dispute; however, the landlord had actual notice of these proceedings. On the basis of this evidence, I am satisfied that the landlord was served with the dispute resolution package.

The landlord testified that he served the tenant with the dispute resolution package on 18 November 2014 by posting the package to the tenant's door. The tenant did not dispute this service. Pursuant to section 89, posting the dispute resolution package is an acceptable method of service for a landlord's application for an order of possession, but not the remainder of the landlord's application; however, the tenant had actual notice of these proceedings. On the basis of this evidence, I am satisfied that the tenant was served with dispute resolution package.

The landlord testified that he served the tenant with the 10 Day Notice on 7 November 2014 by posting it to the tenant's door. The tenant did not dispute service of this notice, but says that she did not receive it until 13 November 2014. The tenant did not provide any reason why she did not receive the 10 Day Notice until 13 November 2014. On the basis of this evidence, I am satisfied that the tenant was deemed served with 10 Day Notice on 10 November 2014 pursuant to sections 88 and 90 of the Act.

At the hearing the landlord asked to amend his application to include December's rent. As the tenant ought to have known that by staying in the rental unit she was incurring additional rent, I allowed the amendment as there was no prejudice to the tenant.

#### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's claim and my findings around each are set out below.

This tenancy began in September 2013. There is no written tenancy agreement. Monthly rent of \$700.00 was due on the first. The landlord collected a security deposit of \$350.00 that he continues to hold.

The landlord testified that the tenant removed the smoke detector and placed it in the freezer. The landlord testified that the tenant caused damage to both the electrical panel and the smoke detector. The landlord testified that he did the repairs to these components himself, but that materials for the repairs cost \$120.00. The landlord seeks to recover this cost from the tenant. The tenant denies this damage.

The landlord testified that the tenant failed to pay her rent due 1 November 2014. The landlord testified that he thought that the tenant was leaving the rental unit as he observed that she had packed some of her belongings. He testified that he told the tenant that she could stay a few days into November without paying rent. The landlord testified that when the tenant failed to pay rent by 7 November 2014 he issued the 10 Day Notice. The landlord testified that the tenant has not paid any rent since he issued the 10 Day Notice.

The tenant filed her application on 17 November 2014. The tenant testified that on 4 November 2014, she attempted to pay her rent in cash to the landlord. The landlord testified that the tenant never attempted to pay rent.

The landlord seeks a monetary order of \$1,570.00:

<b>Item</b>	<b>Amount</b>
Unpaid November Rent	\$700.00
Unpaid December Rent	700.00
Cost of Materials	120.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order Sought</b>	<b>\$1,570.00</b>

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find, on a balance of probabilities, the tenant did not pay or attempt to pay her rent when it was due or within the five days provided for pursuant to section 46. The tenant did not provide any evidence that would indicate that she was entitled to deduct any amount from rent. The tenant does not dispute that she has not paid her rent.

As the tenant is not entitled to have the 10 Day Notice cancelled, I find that the landlord is entitled to a two-day order of possession.

I find that the landlord has proven that the tenant failed to pay rent for both November and December and that he is entitled to those amounts.

The landlord has alleged that he had to conduct repairs to the rental unit as a result of the tenant's actions. To be successful in such a claim, the landlord must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the tenant. The landlord has not provided me with any receipts or evidence of the alleged damage. On this basis, I find that the landlord has failed to meet his burden in respect of his claim for damages. I therefore dismiss this portion of the landlord's claim without leave to reapply.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The landlord testified that he continued to hold the tenant's \$350.00 security deposit, plus interest, paid on in June 2013. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,100.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid November Rent	\$700.00
Unpaid December Rent	700.00
Recovery of Filing Fee for this Application	50.00
Offset Security Deposit Amount	-350.00
<b>Total Monetary Order</b>	<b>\$1100.00</b>

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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.

The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 18, 2014

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Residential Tenancy Branch

