



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SINGLA BROS. HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on November 18, 2014. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on August 1, 2014 as a 1 year fixed term tenancy with an expiry date of July 31, 2015. Rent was \$1,250.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$675.00 on July 11, 2014.

The Landlord said that as a result of the Tenant not paying for November, 2014 when it was due she issued a 10 Day Notice to End Tenancy for unpaid rent dated November 3, 2014. The Landlord said she posted the Notice on the door of the Tenant's rental unit on November 3, 2014. The Landlord said the Tenant has unpaid rent for November in the amount of \$1,250.00. As well the Landlord said the Tenant has unpaid rent for December, 2014 in the amount of \$1,250.00 because the Tenant did not give the Landlord proper notice to end the tenancy. The Landlord said she has rented the unit for the end of January, 2015.

The Landlord continued to say the tenancy ended on November 10, 2014 when the Tenant moved out without giving the Landlord proper notice that he was ending the tenancy. The Landlord said she is withdrawing her request for an Order of Possession.

Further the Landlord said she is requesting \$1,250.00 in liquidated damages as this amount is included in the tenancy agreement if the Tenant breaks the tenancy agreement by moving out before the expiry date of the tenancy agreement which is July 31, 2015. The Landlord said this is not a penalty but a claim to recover the costs to re-rent the unit. The Landlord said she showed the unit 6 times and advertised on two web sites and in the newspaper for a week.

In addition the Landlord requested to recover from the Tenant the \$50.00 filing fee for this proceeding.

The Landlord said her total claim is for \$1,250.00 in unpaid rent, \$1,250.00 in lost rental income, liquidated damages for \$1,250.00 and the \$50.00 filing fee.

The Landlord also requested to retain the Tenant's security deposit of \$675.00 and the remote deposit of \$75.00 as partial payment of these amounts.

### Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenant did not give the Landlord proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the rent of \$1,250.00 for November, 2014 and for the rent of \$1,250.00 for December, 2014.

Policy Guideline #4 says liquidated damages must be a pre-estimate of losses if a tenancy agreement is broken and cannot be a penalty.

As such an Arbitrator must determine what is a reasonable amount for liquidated damages based on a pre-estimate of costs or actual costs the Landlord incurred because of the breach of the tenancy agreement. In this case the Landlord said she showed the unit 6 times and advertised on the internet and in the newspaper. As well there is no pre-estimate of costs in clause 1 of the tenancy agreement which includes the liquidated damages clause. Therefore I find from the Landlord's testimony that a

reasonable pre-estimate of cost to re-rent the unit would be 6 hours of showing the unit at a cost of \$50.00 per hour totally \$300.00 and \$300.00 for the time and cost of advertising the unit. I award the Landlord \$600.00 in liquidated damages.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security and remote deposits in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 2,500.00
	Liquidated damages	\$ 600.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$3,150.00
Less:	Security Deposit	\$ 675.00
	Remote Deposit	\$ 75.00
	Subtotal:	\$ 750.00
	Balance Owing	\$ 2,400.00

### Conclusion

A Monetary Order in the amount of \$2,400.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: December 16, 2014

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Residential Tenancy Branch

