



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC

### 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 pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although the hearing continued until 11:33 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, present sworn testimony, and to make submissions. The landlord testified that he and the tenant agreed to a payment arrangement of the outstanding rent and so he withdrew his application for a monetary claim. However, the landlord proceeded with his application for an Order of Possession.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was placed in the tenant's mail slot for his rental unit on October 23, 2014. The landlord provided a copy of the 10 Day Notice with an effective date of November 5, 2014. On the basis of this evidence, I find that the tenant was deemed served with the 10 Day Notice pursuant to section 88 and 90 of the *Act* on October 26, 2014, 3 days after it was placed in the tenant's mail slot. The 10 Day Notice indicated that the tenant had failed to pay rent in the amount of \$950.00 that was due on October 1, 2014.

The landlord testified that the dispute resolution package, including Notice of Dispute Resolution hearing, was sent to the tenant by registered mail on November 6, 2014. The landlord provided a receipt and tracking number from Canada Post with respect to this mailing. Based on this evidence, I find that the tenant was deemed served with the

dispute resolution package pursuant to section 89 and 90 of the *Act* on November 11, 2014, five days after mailing.

### Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This month to month tenancy began on September 15, 2014 with a rental amount of \$950.00 payable on the first of each month. The landlord testified he continues to hold a security deposit in the amount of \$ 475.00 paid to him on September 15, 2014.

The landlord seeks to end this tenancy as a result of non-payment of rent. The landlord withdrew his application for a monetary order for the outstanding rental amount. The landlord testified that the tenant paid two weeks of rent on September 15, 2014, the beginning of his tenancy. On October 10, the tenant's cheque for October rent was returned to the landlord. The landlord testified that, as of the hearing date, the tenant had not paid rent for November or December.

The landlord testified that he had spoken to the tenant on numerous occasions in person and by email with respect to the outstanding rent. He testified that he telephoned the tenant on October 10, 2014 when his cheque was returned. He testified that he also emailed the tenant on October 16, 2014 to request payment of the outstanding rent. He testified that he emailed several times to provide opportunities to meet the tenant and receive payment for the outstanding rent. The landlord testified that, often, the tenant failed to respond to these requests at all or failed to attend scheduled meetings to pay the rent.

The landlord testified that he agreed to a payment arrangement proposed by the tenant. On December 2, 2014, the tenant paid \$950.00 for October rent. The landlord has agreed to accept payment for the outstanding November and December rent on December 23, 2014. The landlord testified that, in accepting the October rent, the tenant was informed that his tenancy would not be reinstated at that point. After speaking to the tenant, and reaching this payment arrangement with the tenant, the landlord sent an email to the tenant indicating that failure to meet the terms of the payment arrangement would result in an end to the tenancy.

### Analysis

There is undisputed evidence that the tenant did not pay his rent on time for October, November and December. There is undisputed evidence that, as of the date of this hearing, November and December rent remains unpaid. However, it is the outstanding October rent that forms the basis of this application. Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.” The landlord has complied with this section by providing notice with respect to the unpaid October rent. The landlord also complied with section 52 of the *Act* with respect to form and content of the notice to end tenancy.

If a tenant does not pay all rent or apply for arbitration within 5 days of receiving a notice to end tenancy, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The effective date, in this case, was November 5, 2014. While the tenant provided \$950.00 rent to the landlord on December 2, 2014, the landlord was clear that the tenancy was not reinstated. This payment was also made well after the 5 days outlined in section 46(4) of the *Act* as the timeline for a tenant to either respond to a notice to end tenancy by paying his overdue rent or disputing the notice. The landlord’s testimony is that the tenant was informed of the obligations he must meet in order to maintain his tenancy. The landlord informed the tenant that he must pay all of his outstanding rent on or before December 23, 2014. The landlord also advised that, should the tenancy continue with the payment agreement terms met, the tenant will be subject to the provisions of his tenancy agreement and the Residential tenancy Act for the remainder of the tenancy. Specifically, he is to pay his rent on time.

Section 26(1) of the *Act* establishes that “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.” The Residential Tenancy Act and the rental agreement between the tenant and landlord require the tenant to pay his rent on the first of each month. The tenant has failed to do so.

I will not consider the application for a monetary order as the landlord has withdrawn that portion of his application.

The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent. In accordance

with section 46(5) of the *Act*, the tenant's failure to take this action within five days led to the end of his tenancy on November 5, 2014 and required him to vacate the rental premises by that date. As that has not occurred, I find that the landlord is entitled to an Order of Possession. Given the undisputed evidence of the landlord with respect to a provisional payment agreement with the tenant, the landlord seeks an Order of Possession dated after the payments are scheduled to be complete. The landlord will be given a formal Order of Possession which must be served on the tenant and is to be served only if the tenant does not comply with the payment arrangement. If the tenant is served with this Order of Possession and the tenant does not vacate the rental unit by the date required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Given the landlord has been successful in his application, I find that the landlord is entitled to recover the filing fees paid for this application.

### Conclusion

The landlord is provided with a formal copy of an order of possession effective December 24, 2014 to be used **only** if the tenant does not abide by the payment arrangement between the landlord and tenant. Should the tenant fail to meet this payment arrangement and should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to recover the \$50.00 filing fee for this application. To implement this decision, I order the landlord to retain \$50.00 from the tenant's security deposit. I order that the value of the security deposit currently held by the landlord is reduced from \$475.00 to \$425.00.

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 11, 2014

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Residential Tenancy Branch

