



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC COVE PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### 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 its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0943 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord's agent (the agent) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that the landlord served the tenant with the dispute resolution package on 29 December 2014 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that he personally served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on 15 December 2014. The landlord provided me with a Proof of Service document that showed the same. On the basis of this evidence, I am satisfied that the tenant was served with the 10 Day Notice pursuant to section 88 of the Act.

*Preliminary Issue – Landlord's Request to Amend Application*

At the hearing the agent asked to amend the landlord's application to include January's rent. As the tenant reasonably ought to have known that this amount was owed, I have allowed the amendment as there is no undue prejudice to the tenants.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award 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

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

The landlord and tenant entered into a tenancy agreement on 23 October 2014 for a tenancy beginning 1 November 2014. Monthly rent of \$820.00 was due on the first. The agent testified that the landlord continues to hold the tenant's security deposit of \$410.00, which was paid 24 October 2014.

On 15 December 2014, the landlord served the 10 Day Notice to the tenant. The 10 Day Notice, dated 15 December 2014, was given as the tenant had failed to pay \$820.00 that was due on 1 December 2014. The 10 Day Notice set out that the tenant had until 26 December 2014 to vacate the rental unit.

The agent testified that the landlord has not received any payments from the tenant since the landlord issued the 10 Day Notice.

The landlord seeks a total monetary order in the amount of \$1,280.00,:

<b>Item</b>	<b>Amount</b>
Unpaid December Rent	\$820.00
Unpaid January Rent	820.00
Retained Security Deposit	-410.00
Recover Filing Fee	50.00
<b>Total Monetary Order Sought</b>	<b>\$1,280.00</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.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 26 December 2014. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The agent has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$1,640.00. I find that the landlord has proven its entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

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.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,280.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid December Rent	\$820.00
Unpaid January Rent	820.00
Offset Security Deposit	-410.00
Recover Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$1,280.00</b>

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of 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 *Residential Tenancy Act*.

Dated: January 21, 2015

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Residential Tenancy Branch

