



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP MEDALLION REALTY  
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 1346 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. 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 she served the tenant with the dispute resolution package by registered mail. The agent testified that the registered mailing was delivered on 9 December 2014. The agent provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

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

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 are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 February 2014. Monthly rent of \$1,300.00 is due on the first. The agent testified that the landlord continues to hold the tenant's security deposit of \$650.00 that was paid 15 January 2014.

The agent served the tenant with the 10 Day Notice on 4 November 2014 by posting it to the tenant's door. The agent testified she spoke with the tenant and he confirmed that he had the notice. I find that the tenant was served with the 10 Day Notice.

The 10 Day Notice set out an effective date of 14 November 2014 and was given for \$950.00 of outstanding rent that was due 1 November 2014.

The agent testified that the tenant currently has \$1,300.00 in outstanding rent:

| <b>Item</b>                       | <b>Amount</b>     |
|-----------------------------------|-------------------|
| November Rent as at 10 Day Notice | \$950.00          |
| Payment – 7 November              | -300.00           |
| Payment – 18 November             | -300.00           |
| December Rent                     | 1,300.00          |
| Payment – 8 December              | -900.00           |
| Payment – 18 December             | -400.00           |
| January Rent                      | 1,300.00          |
| Payment – 7 January               | -350.00           |
| <b>Total Rental Arrears</b>       | <b>\$1,300.00</b> |

The agent provided me with receipts for payments made by the tenant on 7 November, 18 November and 8 December. These receipts all included the notation "for use and occupancy only". The agent testified that she provided a similar receipt for the 18

December payment and will be providing a similar receipt for the payment received today.

The agent testified that the tenant is still occupying the rental unit.

The landlord seeks a total monetary order of \$700.00:

| Item                               | Amount          |
|------------------------------------|-----------------|
| Rent arrears                       | \$1,300.00      |
| Filing fee                         | 50.00           |
| Retained Security Deposit          | -650.00         |
| <b>Total Monetary Order Sought</b> | <b>\$700.00</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. I find that the partial payments did not reinstate the tenancy. The tenant has not made application pursuant to subsection 46(4) of the Act. 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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 17 December 2014, the corrected effective date of the 10 Day Notice. 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 \$1,300.00. 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 \$700.00 under the following terms:

| <b>Item</b>                 | <b>Amount</b>   |
|-----------------------------|-----------------|
| Unpaid Rent                 | \$1,300.00      |
| Filing Fee                  | 50.00           |
| Offset Security Deposit     | -650.00         |
| <b>Total Monetary Order</b> | <b>\$700.00</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.

Conclusion

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 07, 2015

---

Residential Tenancy Branch

