



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, 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, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 the hearing despite the teleconference continuing from 1:30p.m. until 1:45p.m. The landlord was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was served by posting on the tenant's door on November 19, 2014. I accept the tenant deemed served with the 10 Day Notice on November 22, 2014, 3 days after its posting. The landlord gave sworn testimony that he served the tenant by registered mail with the Application for Dispute Resolution hearing package on December 12, 2014. He provided a receipt and tracking number with respect to this mailing. I accept that the tenant was deemed served with the Application for Dispute Resolution hearing package on December 17, 2014, 5 days after its mailing.

### Issues 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 as well as damage or loss as a result of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit?  
Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord gave evidence that the original agreement for the premises began May 21, 2014. This fixed term tenancy continued until November 30, 2014 at which time it was to revert to a month to month agreement. Rental for this unit was established at \$725.00. The landlord testified that he continued to hold the \$422.50 security deposit that the original tenant paid on May 24, 2014.

The landlord has applied for an Order of Possession for unpaid rent for the month of November 2014. The landlord testified that the tenant did not pay rent of \$725.00 due on November 1, 2014. The landlord testified that the tenant has not paid rent for December 2014 or January 2015 as of the date of this hearing. The landlord testified that the tenant continues to reside in the unit and has stated that she refuses to move out.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did pay the November rent after receiving the 10 Day Notice. That rental amount for November rent was paid on December 17, 2014. When the landlord received the funds for November rent, he advised the tenant that this amount was for "use and occupancy only" and that he was unable to reinstate her tenancy at this time. The tenant provided postdated cheques for the months of December and January but has recently advised that the landlord that she has cancelled those cheques. The landlord testified that there has been a history of late payment of rent by the tenant from the first month of tenancy and every month following. After the expiration of that 10 Day period, the landlord applied for an Order of Possession.

The landlord is also seeking a monetary award of \$1450.00 for the months of December and January, amended from his original application seeking \$2175.00 to include the November rent as well.

### Analysis

#### Order of Possession

The tenant failed to pay the November rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 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 December 2, 2014. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

#### Monetary Order for Rental Arrears

I find that the landlord is entitled to receive an order for unpaid rent in December 2014 and January 2015. I am issuing the attached monetary order that includes the landlord's application for \$1450.00 in unpaid rent for December 2014 and January 2015.

#### Security Deposit

The landlord testified that he continues to hold a security deposit of \$442.50 plus any interest from the beginning of this tenancy to the date of this decision for this tenancy. There is no interest payable over this period. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

#### Filing Fee

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 am granting the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for December 2014	\$725.00
Rental Arrears for January 2015	725.00
Less Security Deposit and Interest (\$442.50 plus 0 interest)	-442.50
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$1057.50</b>

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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: January 14, 2015

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Residential Tenancy Branch

