



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlords' 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, damage or loss pursuant to section 67;
- authorization to retain all 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 tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. The property manager, for the landlords, attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The property manager ("the landlord") testified that the 10 Day Notice to End Tenancy ("the Notice") was posted on the tenants' door on December 2, 2014. Pursuant to section 88, I accept the tenants were both served with copies of the Notice on December 5, 2014, 3 days after its posting. The landlord testified that the tenants were each sent the Application for Dispute Resolution package by registered mail on December 16, 2014. She provided tracking numbers for those mailings. Based on her undisputed evidence and pursuant to section 89 and 90 of the *Act*, I find the tenants both deemed served with the Dispute Resolution package on December 21, 2014, 5 days after their mailing.

### Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to retain the tenant's security deposit toward any monetary award? Are the landlords entitled to recover the filing fee for this application?

### Background and Evidence

The landlord gave evidence that the original agreement for the rental unit began on January 2009. The current rental amount is \$1115.00 payable on the first of each month. The landlord testified that she continues to hold the \$550.00 security deposit that the original tenants, including tenant AS, paid on January 20, 2009. One original tenant (AS) continues to reside in the unit and the agreement was changed to reflect a different co-tenant (AD) in September 2012. Tenant AS and AD both continue to reside in the rental unit.

The landlord has applied for an Order of Possession for unpaid rent for the month of December 2014. The landlord testified that, on November 30, 2014, the tenants had accrued rental arrears in the amount of \$310.00. The landlord testified that the tenants did not pay rent of \$1115.00 due on December 1, 2014. The landlord testified that the tenants have made two partial payments since December 1, 2014; one payment of \$600.00 on December 13, 2014; and one payment of \$840.00 made on January 12, 2015. The receipt to the tenants for the December 13, 2014 payment was labelled, "for use and occupancy only". The landlord testified that, in receiving both sets of payments, she made it clear that she did not intend to reinstate their tenancy. The landlord testified that all of the tenants' payments have been late since 2009.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did pay a portion of the December rent before receiving the 10 Day Notice on December 21, 2014 and another rental amount after receiving the 10 Day Notice. When the rental amount remained unpaid by the tenants, the landlord applied for an Order of Possession.

The landlord outlined the outstanding rental amounts and payments by the tenants as follows;

<b>Item</b>	<b>Amount</b>
Unpaid Rent prior to December 1, 2014	\$ 310.00
Unpaid Rent for December 2014	1115.00
Unpaid Rent for January 2015	1115.00
Tenants' Payment – December 13, 2014	-600.00
Tenants' Payment – January 12, 2015	-840.00
Late Fee – December 2014	25.00
Late Fee – January 2015	25.00
<b>Rental Arrears Claimed by Landlord</b>	<b>\$1200.00</b>

The landlord is seeking a monetary award of \$1200.00 for the remaining unpaid rent for the months of December 2014 and January 2015 as well as \$25.00 in late/nsf charges for those months. He also applied to retain the tenants' security deposit and recover his filing fee for this application.

### Analysis

Order of Possession: The tenants failed to pay the \$1425.00 in unpaid rent identified on the 10 Day Notice within five days of receiving the 10 Day Notice to End Tenancy. They paid a partial amount of \$600.00 and a further amount of \$840.00 on January 12, 2015. However, section 27 of the *Act* required the tenants to pay the full rental amount on the date required by the tenancy agreement. The tenants have not paid the outstanding amount as required by the Notice served by the landlord and the tenants have not, to the date of this hearing, paid their full rental arrears. The tenants have also 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 either pay the amount owing on the Notice or dispute that Notice within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 15, 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. The landlord testified that he has received partial payments from the tenants towards the rental arrears. The landlord also applied for two \$25.00 late fees for the months of December and January. I am issuing the attached monetary order that includes the landlord's amended application for unpaid rent for December 2014 and January 2015, and the late fees.

Security Deposit: The landlord testified that he continues to hold a security deposit of \$550.00 plus any interest from 2009 to the date of this decision for this tenancy. There is no interest payable for this time 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 the amount of \$650.00 in favour of the landlords as follows:

<b>Item</b>	<b>Amount</b>
Unpaid Rent prior to December 1, 2014	\$ 310.00
Unpaid Rent for December 2014	1115.00
Unpaid Rent for January 2015	1115.00
Tenants' Payment – December 13, 2014	-600.00
Tenants' Payment – January 12, 2015	-840.00
Less Security Deposit	-550.00
Late Fee – December 2014	25.00
Late Fee – January 2015	25.00
Filing Fee	50.00
<b>Total Monetary Award</b>	<b>\$650.00</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 15, 2015

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Residential Tenancy Branch

