



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MDSD & FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenant by posting on December 3, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the tenant by mailing, by registered mail to where the tenant resides on December 22, 2014. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on September 1, 2014 and end on August 31, 2015. The rent is \$890 plus \$25 for parking per month payable in advance on the first day of each month. The tenant paid a security deposit of \$445 at the start of the tenancy.

The tenant(s) failed to pay the rent for the months of December and the landlord served a 10 day Notice to End Tenancy. The tenant paid the arrears for December on December 24, 2015 and the landlord accepted the payment for "use and occupation only". The tenant failed to pay the rent for January and the sum of \$965 remains outstanding including (\$25 for parking, \$25 NSF fee and \$25 late fee). The tenant(s) continues to live in the rental unit.

### Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession. It is possible the tenant will pay the arrears and the landlord will reinstate the tenancy. With the consent of the parties I set the effective date of the Order for Possession for February 1, 2015.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

### Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of \$965 remains outstanding including (\$25 for parking, \$25 NSF fee and \$25 late fee). I determined the

landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. **I granted the landlord a monetary order in the sum of \$965 plus the sum of \$50 in respect of the filing fee for a total of \$1015.**

Security Deposit

**I determined the security deposit plus interest totals the sum of \$445. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$570.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Settlement:

The parties reached a settlement with respect to the payment of the arrears and the rent for February and the reinstatement of the tenancy and they have asked that I record the agreement as follows:

- a. The tenant represented he will make the following payments:
  - The sum of \$1015 on or before January 23, 2015 (the arrears of rent including the NSF fee, late fee and filing fee).
  - The sum of \$890 (the rent for February) plus \$25 for parking for a total of \$915 by January 31, 2015.
- b. The parties agree that if the tenant makes the payments as provided above the landlord shall reinstate the tenancy and will not rely on the Order of Possession and monetary order provided with this decision. However, if the tenant fails to

make any one of these payments the landlord shall be at liberty to enforce these orders without further notice to the tenant.

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

