



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. An Order of Possession for unpaid rent pursuant to section 55;
2. A monetary order for unpaid rent and losses from damage pursuant to section 67;
3. An Order to be allowed to keep all or part of the security deposit pursuant to section 38; and
4. To recover the filing fee from the tenant for the cost of this application pursuant to section 72.

The tenant did not attend this teleconference hearing. 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 ("the 10 Day Notice") was personally served to the tenant on November 6, 2014. The landlord gave sworn testimony that he served the tenant with the Application for Dispute Resolution hearing package by registered mail on November 26, 2014 and with additional evidence by registered mail on December 5, 2014. The landlord provided receipts and tracking numbers for both mailings. I accept that the tenant was duly served with the 10 Day Notice pursuant to section 88 of the *Act*. I find the tenant deemed served with the Application for Dispute Resolution hearing package and the additional evidence 5 days after their respective registered mailings, pursuant to section 89 and 90 of the *Act*.

### Issues to be Decided

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

Is the landlord entitled to a monetary order for unpaid rent and loss from damage to the rental unit? Is the landlord entitled to retain the security deposit? Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

This tenancy began on October 1, 2009 as a fixed tenancy for one year. After that time, the tenancy continued on a month to month basis. The rental amount for this unit is \$1875.00 payable on the first of each month. The landlord testified that he continues to hold the \$900.00 security deposit that was paid by the tenant on September 29, 2009. The landlord testified that the tenant vacated the rental unit on December 10, 2014. The landlord testified that when the tenant returned the keys to the landlord on December 10, 2014, he stated that he had “no intention to return to the property”.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the November 2014 rent after receiving the 10 Day Notice on November 6, 2014. After the expiration of that 10 Day period, and 9 more days, the landlord applied for an Order of Possession.

The landlord has applied for an Order of Possession for unpaid rent for the months of November and December 2014. The landlord testified that the tenant did not pay rent of \$1875.00 due on November 1, 2014 and again, did not pay rent of \$1875.00 due on December 1, 2014.

The landlord is seeking a monetary award of \$3750.00 for the months of November and December 2014. As well, the landlord submitted a receipt for \$1500.00 to remove all of the items left in the rental unit.

The landlord submitted photographs with his evidence package that show a significant amount of furniture and smaller household items both inside and outside the residential premises. The photographs also show a substantial amount of garbage and food items in the rental unit. The landlord testified that he was required, at his own cost, to dispose of all items left in the rental unit. He further testified that none of the items had any significant value. The photographs provided in evidence support this testimony.

### Analysis

Order of Possession: Given that the tenant has vacated the premises, the landlord has removed abandoned items and has the keys to the rental unit in his custody, an Order of Possession is not required.

Monetary Order: I find that the landlord is entitled to receive an order for unpaid rent in November and December 2014. The landlord testified that he is unlikely to be in a position to rent the premises before January 1, 2015 as considerable cleaning and refurbishing of the premises will be required to restore the rental unit. I accept this uncontested evidence offered by the landlord supported by the documentary evidence supplied in the landlord's application. I am issuing the attached monetary order that includes the landlord's application for \$3750.00 in unpaid rent for November and December 2014.

The landlord also applied for reimbursement of \$1500.00 in "junk removal". He provided a bill for services to clear the rental unit of the tenant's belongings and provided undisputed testimony that this bill was merely for clearance of the items in the tenant's rental unit.

I refer to the Residential Tenancy Policy Guideline #1 that states,

*Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.*

I also refer to sections 24 and 25 of the *Residential Tenancy Regulations* ("*the Regulations*") that describe a landlord's obligations regarding tenant belongings. A landlord may consider a tenant's property abandoned if, as in this case, the tenant has vacated the unit and the landlord receives oral notice of the tenant's intention not to return.

Section 24 of the *Act* states that a landlord may consider a tenant has abandoned personal property if, as in this case, the tenant leaves the personal property on the residential property that he or she has vacated and when the landlord receives express oral notice of the tenant's intention not to return to the residential property. The landlord is obliged, in such circumstances, to dispose of the property in a "commercially reasonable manner".

In these circumstances, where the tenant has vacated the unit, leaving possessions behind and indicated to the landlord that he does not intend to return, the landlord is within his purview to remove the possessions from the premises.

Based on the landlord's undisputed testimony and the documentary evidence, including photographs provided, I find that the landlord has established, on a balance of probabilities, that the tenant left behind a significant amount of items and did not clean the rental unit. I find that the landlord has justified his claim for a monetary award for loss related to damage to the unit. The landlord has provided undisputed evidence that his loss was \$1500.00. However, based on the lack of detail in the bill submitted and a consideration of the reasonableness in landlord expenditures at the end of tenancy pursuant to the *Act*, the *Regulations* and Policy Guidelines, I find that the award should be reduced to a more reasonable amount of \$1000.00.

The landlord testified that he continued to hold the \$900.00 security deposit paid by the tenant. There is no interest payable for the period from payment on September 2009 to the date of this hearing. I order the landlord to retain the security deposit in partial satisfaction of the monetary award.

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 dismiss the landlord's application for an Order of as it is unnecessary.

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

Rental Arrears for November 2014	\$1875.00
Rental Arrears for December 2014	1875.00
Recovery of loss from Damage	1000.00
Less Security Deposit (no interest payable)	-900.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$3900.00</b>

The landlord is provided with formal Orders in the above terms. Should the tenant 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 8, 2015

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Residential Tenancy Branch

