



# 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, 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 this hearing, although I waited until 0947 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenant with the dispute resolution package on 23 December 2014 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord testified that he personally served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on 8 December 2014. This service was witnessed and I was provided with a Proof of Service that set out the same. On the basis of this evidence, I am satisfied that the tenant was served with the 10 Day Notice pursuant to section 88 of the Act.

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 and losses arising out of this tenancy? 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 landlord, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 2 June 2014. The tenant and landlord signed a tenancy agreement dated 31 May 2014. The tenancy agreement established that monthly rent of \$350.00 is due on the first. The landlord testified that he continues to hold the tenant's security deposit in the amount of \$175.00, which was collected 31 May 2014.

On 8 December 2014, the landlord served the tenant with the 10 Day Notice. The 10 Day Notice was dated 8 December 2014 and set out that it was being issued as the tenant had failed to pay \$410.00 of rent that was due on 1 December 2014. The landlord testified that this notice was given for December's rent as well as \$60.00 of rental arrears from November 2014.

The landlord testified that on 22 December 2014, he received \$60.00 from the tenant. The landlord issued a receipt to the tenant, but this receipt did not include the notation "for use and occupancy only"; however, the landlord did tell the tenant when he received the payment that the landlord's action (this hearing) was still going ahead).

The landlord seeks a total award of \$575.00:

<b>Item</b>	<b>Amount</b>
Unpaid December Rent	\$350.00
Unpaid January Rent	350.00
Offset Security Deposit	-175.00
Recover Filing Fee	50.00
<b>Total Monetary Order Sought</b>	<b>\$575.00</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 landlord testified that told the tenant that the landlord's application for an order of possession was proceeding. I find that the landlord did not reinstate the tenancy by accepting the partial rent payment of \$60.00.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. 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 18 December 2014. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$700.00. I find that the landlord has proven his 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 \$575.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid December Rent	\$350.00
Unpaid January Rent	350.00
Offset Security Deposit	-175.00
Recover Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$575.00</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.

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 20, 2015

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Residential Tenancy Branch

