



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remax Little Oak Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

### Preliminary Matters

The Tenant did not attend the Hearing. The Landlord states that they are aware that the Tenant has been in hospital since September 2014 with either Alzheimer’s or dementia. The Landlord states that they have been in communication with the Tenant’s social worker since September 2014 and have been informed that the Tenant is in the process of having the Public Trustee involved. The Landlord states that they have delayed this application for several months in anticipation of this involvement but can no longer wait. The Landlord states that they served the application for dispute resolution and notice of hearing by registered mail to the unit and informed the social worker of having made and served the application.

Section 89 of the Act provides that an application for dispute resolution must be given in one of the following ways:

- (a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the undisputed evidence of the Landlord of registered mail delivery and considering that the Landlord has informed a responsible person involved with the Tenant of that delivery, I am satisfied that the Landlord has served the Tenant with the application for dispute resolution in accordance with the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

The Landlord states that the tenancy agreement was never signed and that they have been collecting rent higher than provided for in the unsigned tenancy agreement. The Landlord states that he does not know why this has happened and asks for an amendment to the application to reduce the amount of rent being claimed to that of the amount of rent provided for in the tenancy agreement. Considering that this amendment would not prejudice the Tenant, I allow the amendment.

#### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on April 1, 2011. The tenancy agreement provides that rent of \$560.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$270.00 as a security deposit from the Tenant. The Tenant failed to pay rent for September, October and November 2014 and on November 4, 2014 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door. The Tenant has not made an application for dispute resolution, has not paid the arrears, has not paid December 2014 rent and has not moved out of the unit. The Landlord claims \$2,800.00.

### Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the Notice by making an application for dispute resolution and the time for making that application has expired.

Based on the Landlord's evidence I find that the Tenant was given a valid Notice. The Tenant has not filed an application to dispute the Notice and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **\$2,800.00** in unpaid rent. The Landlord is entitled to recovery of the \$50.00 filing fee for a total monetary amount of **\$2,850.00**. Setting the security deposit of \$270.00 plus zero interest off the entitlement leaves **\$2,580.00** owed by the Tenant to the Landlord.

Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I order** that the Landlord retain the **deposit** and interest of \$270.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,580.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 07, 2015

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Residential Tenancy Branch

