



# Dispute Resolution Services

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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 a representative of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenant by posting on January 2, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail address to the Tenant on January 15, 2015. The landlord testified it was accepted for delivery on January 30, 2015. In addition the landlord gave a copy of the Application for Dispute Resolution/Notice of Hearing to an adult person who apparently resides with the tenant on January 29, 2015. personally served on February , 2015. 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 May 1, 2014. The rent is \$910 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$455 at the start of the tenancy.

At the time the Notice was served the tenant owed outstanding rent. The arrears were paid on January 15, 2015. The tenant(s) failed to pay the rent for the months of February 2015 and the sum of \$910 remains owing. The tenant(s) have remained in the rental unit.

### Analysis

#### Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. 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. At the time the 10 day Notice to End Tenancy was served there was outstanding rent. The Residential Tenancy Act provides that if the tenant pays the arrears within 5 days the Notice is void. However, in this case the arrears of rent was paid after the 5 day period. In such a situation the landlord has an election. The landlord can accept the payment and reinstate the tenancy. Alternatively, the landlord can accept the payment for "use and occupation" in which case the tenant must vacate at the end of the rental payment period. The landlord accepted the payment for "use and occupation only" and therefore did not reinstate the tenancy. The tenant failed to pay the rent for February. Accordingly, I granted the landlord an Order for Possession. **At the request of the landlord I set the effective date of the Order for Possession for February 27, 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 February 2015 and the sum of \$910 remains owing. I granted the landlord a monetary order in the sum of \$910 plus the sum of \$50 in respect of the filing fee for a total of \$960.

Security Deposit

I determined the security deposit totals the sum of \$455. **I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$505.**

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.

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: February 04, 2015

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Residential Tenancy Branch

