



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, 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 and for cause, repeatedly late rent pursuant to section 55;
- a monetary order for unpaid rent 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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:14 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord's representative ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord withdrew his application for recovery of unpaid rent, seeking only his filing fee.

The landlord testified that he served the 10 Day Notice to End Tenancy ("10 Day Notice") by posting the notice on the tenant's rental unit door. The landlord testified and provided documentary evidence that this posting was witnessed on January 6, 2015. The landlord also testified that he served a 1 Month Notice to End Tenancy ("1 Month Notice") on January 27, 2015 by posting the notice on the tenant's door. Pursuant to section 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on January 9, 2015 and the 1 Month Notice on January 30, 2015, both 3 days after the posting of those notices. The landlord testified that the Application for Dispute Resolution, with Notice of Hearing was served by registered mail on January 23, 2015. The landlord provided the tracking number and receipt for this mailing. Pursuant to section 89 and 90 of the *Act*, the tenant was deemed served with the Application for Dispute Resolution, on January 28, 2015, 5 days after it was mailed.

### Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or repeated late payment of rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award?

### Background and Evidence

The landlord testified that this tenancy began as a fixed term on August 1, 2013. After the one year fixed term, the tenancy continued on a month to month basis. The landlord testified that the current rental amount is \$114.64 payable on the first of each month. The landlord provided a copy of the Tenancy Agreement with respect to this tenancy to confirm the details of the agreement. The landlord testified that he continues to hold a \$560.00 security deposit paid by the tenant on August 1, 2013. The landlord testified that the tenant continues to reside in the rental unit.

The landlord testified that the tenant paid all outstanding rental amounts on January 27, 2015. The landlord testified that the outstanding rental amounts were issued with a receipt indicating, "*for use and occupancy*" only. He provided copies of the receipts for previous payments as well as the receipt for this most recent payment. The landlord also testified that he advised his residential manager to ensure the tenant was aware that this matter was not resolved and was proceeding to hearing. The landlord withdrew his application for a monetary order for unpaid rent, seeking only his filing fee. The landlord indicated a desire to resolve the issue of ending the tenancy however, because the tenant did not attend this hearing, he proceeded with his application for an Order of Possession.

The landlord has applied for an Order of Possession for non-payment of rent for the month of January 2015. The landlord testified that the tenant did not pay rent of \$114.64.00 due on January 1, 2015. The landlord testified that he had also issued notices to end tenancy in November and December of 2014. He testified that he also sent warning letters to the client with respect to repeated late or non-payment of rent. The landlord testified that the tenant paid all outstanding rent on January 27, 2015 but that he and the residential manager were clear, verbally and in written receipts, that the tenancy had not been reinstated. The landlord testified that the tenant has not paid the late fees for December 2014 or January 2015.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the January 2015 rent after deemed receipt of the 10 Day Notice on January 9, 2015. The landlord applied for an Order of Possession.

### Analysis

The tenant failed to pay the January 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 14, 2015. As that has not occurred, I find that the landlord is entitled to an Order of Possession. The landlord sought an Order of Possession dated not earlier than February 26, 2015 however he acknowledged the tenant has paid rent for February 2015.

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, the only monetary amount sought in this matter.

### Conclusion

I am granting the landlord's an Order of Possession to be effective February 28, 2015 and after notice is served to the tenant. If the tenant does not vacate the rental unit by the date required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I am granting a monetary award of \$50.00 to the landlord for the filing fee in this matter. To give effect to that award, the landlord may reduce the tenant's security deposit from \$ 560.00 to \$510.00.

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 19, 2015