



# Dispute Resolution Services

Page: 1

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, pursuant to section 67;
- a monetary order 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 the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing although it lasted approximately 105 minutes. The landlord's agent ("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 is one of three owners of this rental building and that his brother, "CW," is the landlord for this rental unit. The landlord testified that he had authority to speak as agent on behalf of CW at this hearing. The landlord's witness, "WW," provided testimony at this hearing and confirmed that she is the building manager for this rental unit.

The landlord gave sworn testimony that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 3, 2015 ("10 Day Notice"), by posting it to her rental unit door on the same date. WW confirmed that she witnessed this posting and that she signed a proof of service, dated January 3, 2015, which was provided with the landlord's application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on January 6, 2015, three days after its posting.

The landlord testified that he served the tenant with the Application for Dispute Resolution hearing package ("Application") on January 14, 2015, by way of registered mail. The landlord provided a Canada Post customer receipt and tracking number as proof of service with his Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application on January 19, 2015, five days after its registered mailing.

### Issues 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 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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

The landlord testified that this month to month tenancy began on November 1, 2010. Monthly rent in the current amount of \$723.40 is payable on the 1<sup>st</sup> day of each month. A security deposit of \$340.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement, which names CW as the landlord, was provided with the landlord's Application. The landlord testified that the tenant continues to reside in the rental unit.

Under the tenancy agreement, the initial rent due was \$680.00. The landlord provided a Notice of Rent Increase, dated June 30, 2013, indicating that the new monthly rent of \$705.80, after a monthly increase of \$25.80, would be payable beginning on October 1, 2013. The landlord provided a second Notice of Rent Increase, dated September 22, 2014, indicating that the new monthly rent of \$723.40, after a monthly increase of \$17.60, would be payable beginning on January 1, 2015. The landlord stated that he served this second Notice of Rent Increase to the tenant on September 23, 2014, by way of registered mail. The landlord provided a Canada Post receipt and tracking number as proof of service, with his Application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with this second Notice of Rent Increase on September 28, 2014, five days after its registered mailing.

The landlord stated that rent in the amount of \$18.40 is unpaid for each of January and February 2015. The landlord amended his application to seek a monetary order in the total amount of \$36.80 for unpaid rent.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$723.40 was due on January 1, 2015. The notice indicates an effective move-out date of January 16, 2015. Both the landlord and WW confirmed that \$705.00 was paid by the tenant on January 6, 2015, for January 2015 rent and that a receipt was issued for “use and occupancy only.” The landlord provided a copy of the rent cheque from the tenant, dated January 1, 2015, and the rent receipt issued by the landlord, dated January 6, 2015.

Both the landlord and WW confirmed that \$705.00 was paid by the tenant on February 1, 2015, for February 2015 rent and that a rent receipt had been drafted but had not yet been sent to the tenant. WW provided a copy of this receipt, after the hearing, at my request. The receipt indicates that the payment was accepted for “use and occupancy only.” The landlord and WW confirmed that no further payments have been made by the tenant.

The landlord is also seeking to recover the filing fee of \$50.00 for this Application from the tenant.

### Analysis

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 arguments are reproduced here. The principal aspects of the landlord’s claim and my findings around each are set out below.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant’s non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants caused a loss of rent, utilities and late fees for February 2015.

The landlord issued two notices of rent increase, which are both valid and in accordance with the *Act* and the *Residential Tenancy Regulation*. The tenant was required to pay rent of \$723.40 beginning on January 1, 2015.

The landlord provided undisputed evidence at this hearing, as the tenant did not appear. The tenant failed to pay the full rent due on January 1, 2015, within five days of being deemed to have received the 10 Day Notice. The tenant only made a partial payment of \$705.00 towards this outstanding rent balance, for which a receipt for "use and occupancy only" was issued by the landlord, which did not reinstate the tenancy. This amount does not cover the rent due under either of the two notices of rent increase. No further rent payments have been made by the tenant. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on January 16, 2015, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by January 16, 2015. As this has not occurred, I find that the landlord is entitled to an Order of Possession to take effect **by 1:00 p.m. on February 28, 2015**, as the landlord has accepted payment from the tenant for February 2015 for use and occupancy.

The landlord provided undisputed evidence that the tenant failed to pay \$18.40 in rent for January 2015. The tenant only paid \$705.00 for January 2015 rent, which is not in accordance with either the first or second notices of rent increase. The tenant was required to pay \$723.40 for January 2015 rent. Accordingly, I find that the landlord is entitled to \$18.40 in rental arrears for January 2015.

The tenant was required to vacate the rental unit by January 16, 2015, as per the 10 Day Notice. The tenant remains in the rental unit, causing loss to the landlord under section 7(1). However, the landlord is required to mitigate his losses as per section 7(2) of the *Act*. As per the tenancy agreement, rent of \$723.40 for February 2015 was due on February 1, 2015. The tenant only paid \$705.00 towards rent for this month. I find that the landlord is entitled to \$18.40 in rental arrears for February 2015.

As the landlord was successful in this application, I also find that he is entitled to recover the \$50.00 filing fee paid for the Application from the tenant's security deposit.

The landlord testified that he continues to hold the tenants' security deposit of \$340.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$86.80 total from the tenant's security deposit in full satisfaction of the monetary award. No interest is payable over this period. The landlord is required to deal with the remainder of the tenant's security deposit, in the amount of \$253.20, in accordance with section 38 of the *Act*.

### Conclusion

I grant an Order of Possession to the landlord effective **by 1:00 p.m. on February 28, 2015, a copy of which must be served on the tenant as soon as possible.** Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$86.80 from the tenant's security deposit in full satisfaction of the monetary award, as follows:

Item	Amount
January 2015 Rent	\$723.40
Less partial payment on January 6, 2015	-705.00
February 2015 Rent	\$723.40
Less partial payment on February 1, 2015	-705.00
Recovery of Filing Fee for this application	50.00
<b>Total Amount</b>	<b>\$86.80</b>

The landlord is required to deal with the remainder of the tenant's security deposit, in the amount of \$253.20, in accordance with section 38 of the *Act*.

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 10, 2015

---

Residential Tenancy Branch

