



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, 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; and
- recovery of his filing fee from the tenant.

The tenant did not attend this hearing, although I waited until 1114 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. 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 personally served the tenant with the dispute resolution package on 14 January 2015. The landlord provided me with the name of the individual that witnessed this service. On the basis of this evidence, I am satisfied that the tenant was served with dispute resolution package pursuant to section 89 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 2 January 2015. The landlord testified that he was accompanied by his spouse. On the basis of this evidence, I am satisfied that the tenant was served with 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? Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of these submissions are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

On 1 September 2014, the tenant began occupying the rental unit. Monthly rent of \$579.00 is due on the first. The landlord testified that he continues to hold a security deposit of \$289.50, which was collected from the tenant at the beginning of the tenancy.

On 2 January 2015, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 2 January 2015 and set out an effective date of 12 January 2015. The 10 Day Notice set out that the tenant failed to pay \$608.00 in rent that was due on 1 January 2015. The rental arrears included \$29.00 from December rent and \$579.00 from January rent. The landlord testified that he has not received any payments from the tenant in respect of these rental arrears or payment for the tenant's use and occupancy of the unit in February.

The landlord claims for rental arrears totaling \$1,187.00:

<b>Item</b>	<b>Amount</b>
Unpaid December Rent	\$29.00
Unpaid January Rent	579.00
Unpaid February Rent	579.00
<b>Total Monetary Order Sought</b>	<b>\$1,187.00</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 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 12 January 2015. 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 \$1,187.00. 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 testified that he continued to hold the tenant's \$289.50 security deposit, plus interest, paid on or about 1 September 2014. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$947.50 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid December Rent	\$29.00
Unpaid January Rent	579.00
Unpaid February Rent	579.00
Offset Security Deposit	-289.50
Recover Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$947.50</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 Act.

Dated: February 04, 2015

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Residential Tenancy Branch

