



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LIMITED  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 29, 2015, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by two agents for the Landlord who gave affirmed testimony. Therefore, for the remainder of this decision, terms or references to the Landlord importing the plural shall include the singular and vice versa.

The Landlord testified that the Tenant was served notice of this application, this hearing, and the Landlord's evidence by registered mail on January 29, 2015. Canada Post tracking information was provided in the Landlord's oral testimony. Based on the submissions of the Landlord I find that the Tenant was deemed served notice of this proceeding on February 3, 2015, five days after it was mailed, pursuant to section 90 of the Act. Therefore, I continued in absence of the Tenant.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord submitted evidence that the Tenant entered into a month to month tenancy that began on November 1, 1999. Rent was initially payable on the first of each month in the amount of \$530.00 and has subsequently been increased to \$755.00 effective May 1, 2014. On October 20, 1999 the Tenant paid \$265.00 as the security deposit.

The Landlords submitted that when the Tenant failed to pay the full amount owed for January 2015 rent they posted a 10 Day Notice to the Tenant's door on January 10, 2015, at 9:30 a.m. indicating the Tenant owed \$710.00 that was due January 1, 2015.

The Landlord stated that the Tenant continues to reside in the rental unit and although they have been working closely with the Tenant to get access to assistance and get him back on track with his rent payments, the Tenant still has an outstanding balance due for January and now February rent. The Landlord submitted that the Tenant has made two payments since the 10 Day Notice was issued, \$100.00 on January 21, 2015 and \$120.00 on February 11, 2014, which leaves a balance owing for January of \$490.00 (\$710.00 - \$100.00 - \$120.00) plus \$755.00 for February 2015. As such, the Landlord wished to proceed with his request for an Order of Possession and Monetary Order.

Upon review of the tenant ledger provided in the Landlord's evidence I noted that the rental amount appears to be rounded to the nearest dollar when rent increases were implemented. The Landlord confirmed that it is their practise to assess each tenancy when it is time for an annual rent increase and that they always look at what the maximum allowable increase is for that year and then round down to the nearest dollar or a lower amount, dependent on the tenant situation.

### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on January 13, 2015, three days after it was posted to the door, and the effective date of the Notice was January 23, 2015, pursuant to sections 46 and 90 of the Act.

The Tenant neither paid the rent in FULL nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **January 23, 2015**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

Upon review of the tenant ledger and after consideration that the allowable rent increase amount for 2014 was 2.2% ( $\$739.00 \times 2.2\% = \$755.258$ ), I accept that the rent increase that was effective May 1, 2014, (\$755.00) was an amount rounded down from the maximum allowable amount.

The Landlord claimed unpaid rent of \$490.00 (\$710.00 – \$100.00 - \$120.00) that was due January 1, 2015, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I find the Landlord has met the burden of proof and I award the Landlord unpaid rent in the amount of **\$490.00**.

As noted above this tenancy ended **January 23, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the

unit and not rent for February 2015. The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire month of February 2015, in the amount of **\$755.00**. If the Landlord suffers additional loss they are at liberty to file another application.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid January 2015 Rent	\$ 490.00
Use & Occ. + Loss of Rent Feb. 2015	755.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$1,295.00
<b>LESS:</b> Security Deposit \$265.00 + Interest \$24.57	<u>-289.57</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,005.43</u></b>

### Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$1,005.43**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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: February 26, 2015

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Residential Tenancy Branch

