



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF; MT, CNR, AAT, LAT, AS, RR, SS

### 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, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the Act for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to serve documents or evidence in a different way than required by the Act pursuant to section 71;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65.

The landlord is an estate. The landlord was represented at the hearing by the administratrix of the estate, an agent, and an advocate. The landlord's testimony was provided by the agent.

The tenant did not attend this hearing, although I waited until 0943 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord's representatives attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that the landlord served the tenant with the dispute resolution package on 6 February 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The advocate admitted service of the tenant's application.

The agent testified that the tenant was served with the 10 Day Notice on 19 November 2014 by posting the notice to the tenant's door. The landlord provided me with an affidavit of service that set out the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with 10 Day Notice pursuant to sections 88 and 90 of the Act.

#### Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

At the hearing, the agent asked to amend this application to include unpaid rent for March. As the tenant reasonably ought to have known that these amounts were owed, I have allowed the amendment as there is no undue prejudice to the tenant.

#### Preliminary Issue – Tenant's Application Dismissed

Rule 10.1 of the Rules of Procedure provides that:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the tenant and in the absence of the tenant's participation in this hearing, I order the tenant's application dismissed without leave to reapply.

The tenant's application is dismissed without leave to reapply.

#### 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 and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

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

In April 2012, the tenant began occupying the rental unit. There is no written tenancy agreement available. No security deposit was collected. Monthly rent of \$375.00 is due on the first.

On 19 November 2014, the landlord served the 10 Day Notice to the tenant. The 10 Day Notice was dated 17 November 2014 and set out an effective date of 27 November 2014. The 10 Day Notice set out that the tenant failed to pay \$375.00 in rent that was due on 1 November 2014.

The tenant filed his application for dispute resolution 6 February 2015.

The agent testified that the tenant has not made any payments to the landlord since the issuance of the 10 Day Notice

The landlord claims for rental arrears totaling \$1,875.00:

<b>Item</b>	<b>Amount</b>
Unpaid November Rent	\$375.00
Unpaid December Rent	375.00
Unpaid January Rent	375.00
Unpaid February Rent	375.00
Unpaid March Rent	375.00
<b>Total Rent Arrears</b>	<b>\$1,875.00</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 30 November 2014, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The agent has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$1,875.00. I find that the landlord has proven its entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

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.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,925.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid November Rent	\$375.00
Unpaid December Rent	375.00
Unpaid January Rent	375.00
Unpaid February Rent	375.00
Unpaid March Rent	375.00
Recover Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$1,925.00</b>

The landlord is provided with these orders in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant 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: March 02, 2015

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Residential Tenancy Branch

