



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 639614 BC LTD. C/O KAZAWEST SERVICES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord") and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the tenant confirmed receipt of the landlord's application.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

### Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on November 24, 1997, monthly rent was \$510.00, plus \$10.00 for parking, and the tenant paid a security deposit. The landlord submitted that the current monthly rent is \$589.38, as of January 2015.

The present landlord was not listed as the landlord at the time the tenancy began; the tenant confirmed that the present landlord took over as landlord some time ago.

The landlord gave evidence that on November 17, 2014, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it with the tenant, listing unpaid rent of \$1150.00 as of November 1, 2014. The effective vacancy date listed on the Notice was November 30, 2014.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution. I note that the copy of the Notice the landlord supplied into evidence was not signed or dated; the landlord stated that the Notice he served on the tenant was signed and dated, however.

The landlord submitted that the tenant has not paid rent since the Notice was served upon the tenant and now owes unpaid rent for March 2015.

The landlord's original monetary claim is \$3055.01, comprised of a late fee of \$20.00, an NSF fee of \$26.25, October and November 2014 rent and NSF fee of \$1202.50, December 2014 rent and NSF fee of \$601.25, January rent and NSF fee of \$615.63, and February 2015 rent of \$589.38.

The landlord's relevant documentary evidence included, but was not limited to, accounting records and returned rent cheques.

The tenant did not dispute the amount listed on the Notice or that he received the Notice, and acknowledged not paying rent since the Notice was issued. The tenant submitted further that he had become unemployed and depended on his disability income and assistance from his mother to pay the rent, but unfortunately, his mother has since become deceased.

In response to my question, the tenant stated he could not remember if the Notice he received from the landlord was signed.

### Analysis

I find the landlord submitted sufficient evidence to prove that the tenant was served the Notice, did not pay any of the listed outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, or in this case, November 30, 2014. I further accept that the landlord served a proper, signed and dated Notice on the tenant, as the tenant was unable to dispute the landlord's affirmed testimony.

I therefore find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant,

which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

As to the landlord's monetary claim, I accept that the tenant failed to pay monthly rent of \$575.00 for October and November 2014, each, and that the landlord is entitled to a monetary award for unpaid rent in the amount of \$1150.00.

As the tenancy ended on the effective date of the undisputed Notice, or November 30, 2014, the tenant is now overholding in the rental unit, without paying rent to the landlord. I therefore find the landlord is entitled to a monetary award of \$2343.14, for loss of rent revenue for December 2014, in the amount of \$575.00, and loss of rent revenue of \$589.38 for January, February, and March 2015, each.

As to the landlord's claim for NSF charges and late payment fees, the written tenancy agreement provides that the landlord may charge \$20.00 for a late payment fee or NSF charge by the landlord's bank.

I accept that the landlord charged a late fee of \$20.00 for October 2014, and is entitled to this amount.

As to the NSF charges by the landlord for October, November, December and January, of \$26.25 each, Residential Tenancy Regulation 7(d) allows a landlord to charge an administration fee of not more than \$25.00 for a returned cheque, if allowed by the written tenancy agreement. In this case, as the written tenancy agreement allows for a charge of \$20.00 as an administrative fee for an NSF charge, I allow the landlord that amount for October, November, December and January, each.

If in fact the landlord has attempted to claim that this was the service fee charged by their financial institution, the landlord did not make this claim clear or provide evidence of such a charge.

I award the landlord recovery of their filing fee of \$50.00.

Due to the above, I find the landlord is entitled to a total monetary award of \$3643.14, comprised of unpaid rent for October and November 2014 for \$1150.00, loss of rent revenue for December 2014, and January, February, and March 2015, for \$2343.14, a late payment fee of \$20.00 for October 2014, \$80.00 for NSF charges of \$20.00 for October, November and December 2014, and January 2015, each, and \$50.00 for recovery of their filing fee.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their monetary award of \$3643.14, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

### Conclusion

The landlord's application has been granted.

The landlord is granted an order of possession for the rental unit.

The landlord is granted a monetary order for unpaid rent, loss of rent revenue, fees, and the filing fee.

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: March 26, 2015

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Residential Tenancy Branch

