



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            OPR, MNR, 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, damage or loss pursuant to section 67; 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 I waited until 9:42 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's representative ("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 the tenant had vacated the rental unit and withdrew her application for an Order of Possession.

The landlord testified that the Application for Dispute Resolution package was sent by registered mail to the tenant on February 21, 2015. The landlord provided Canada Post tracking information with respect to this mailing. Based on the evidence provided and pursuant to section 89 and 90 of the *Act*, I find the tenant deemed served with the landlord's dispute resolution package on February 26, 2015, 5 days after its mailing.

### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage or loss?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord testified, supported by the tenancy agreement submitted, that this tenancy began on February 15, 2014. The rental amount is \$835.00 payable on the first of each month. The landlord testified that he continues to hold a \$417.50 security deposit from the tenant paid on January 23, 2014. She testified that she also continues to hold the \$200.00 pet damage deposit the tenant paid on February 9, 2014.

The landlord originally applied for an Order of Possession for unpaid rent for the month of February 2015. The landlord testified that the tenant remained in the rental unit until approximately March 17, 2015, to the best of her knowledge. She further testified that the tenant has now vacated the rental unit, leaving a significant mess behind. She testified that the tenant did not return the keys for the rental unit or provide any forwarding address.

The landlord testified that the tenant did not pay rent of \$835.00 due on February 1, 2015. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the February rent after receiving the 10 Day Notice on February 5, 2015, 3 days after she posted the notice on his door. The landlord testified that, while the tenant remained in the unit for a significant portion of March, he also did not pay any rent for March 2015.

In the landlord's application for dispute resolution, the landlord sought the sum of \$1710.00 for unpaid rent and late fees. The landlord sought a monetary award of \$1670.00 ( $\$835 \times 2$ ) for two month's rent and \$40.00 ( $\$20 \times 2$ ) in late fees for the months of February 2015 and March 2015. The residential tenancy agreement includes a clause for a \$20.00 late rent fee.

The landlord also testified that there was substantial damage to the rental unit. She testified that the carpet required replacing because of multiple stains and burns. She testified that the carpets had been replaced immediately prior to the current tenancy. She testified that the drapes had to be cleaned due to the tobacco smell and discolouration. She testified that furniture was abandoned by the tenant and had to be removed. She testified that the unit was generally very dirty and was cleaned professionally at the landlord's expense.

The landlord testified that the repairs, replacements and cleaning costs totalled \$1783.00. She also testified that the keys had to be replaced as the tenant did not return them. The cost to replace the keys was \$75.00.

### Analysis

The landlord testified that the tenant has vacated the rental unit and she withdrew her application for an Order of Possession. She testified that the tenant provided no forwarding address or gave any notice that he was moving out. She applies for a monetary order for unpaid rent and late fees. Her undisputed sworn testimony is that the tenant did not pay rent in February or March 2015.

I find that the landlord is entitled to receive an order for unpaid rent in February and March 2015. I accept this uncontested evidence offered by the landlord with respect to these unpaid rent amounts. I am issuing the attached monetary order that includes the landlord's application for \$1670.00 in unpaid rent.

The landlord also applied for \$40.00 for fees for late payment of rent for February and March 2015. She provided copies of the written tenancy agreement which established this \$20.00 late payment fee. Based on this documentary evidence and the landlord's testimony regarding unpaid rent, I find that the landlord is entitled to \$40.00 in late fees for the February and March 2015.

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.

The landlord provided sworn, undisputed testimony that the tenant left the rental unit with substantial damage. She testified that the rental unit was both clean and recently refinished before the tenant moved in. She testified that, on inspecting the unit at move-out, the landlord found furniture items left behind and a very dirty rental unit with stains and cigarette burns in the carpet as well as tobacco stained drapes and a general state of disarray.

The landlord testified, supported by documentary evidence submitted, that the landlord spent the following amounts in cleaning and repairing this unit;

Carpet Replacement of brand new carpet	\$1500.00
Furniture Removal	183.00
Cleaning Rental Unit	100.00
Key Replacement	75.00
<b>Total Cost of Damages to Landlord</b>	<b>\$1858.00</b>

The landlord testified that she continues to hold a security deposit of \$417.50 plus any interest from January 23, 2014 to the date of this decision for this tenancy. As well, the landlord testified that she holds a pet damage deposit of \$200.00 plus any interest from February 9, 2014 to the date of this decision for this tenancy. There is no interest payable for either of these deposits over this period of time. I will allow the landlord to retain the security deposit and the pet 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 paid for this application.

### Conclusion

The landlord sought to withdraw her application for an Order of Possession. Therefore, her application for an Order of Possession is withdrawn.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for February 2015	\$835.00
Rental Arrears for March 2015	835.00
Late Payment Fees for February and March 2015 (\$20.00 x 2)	40.00
Damage to Rental Unit, Landlord's Cost	1858.00
Less Security Deposit	-417.50
Less Pet Damage Deposit	-200.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$3000.50</b>

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 23, 2015

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Residential Tenancy Branch

