



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR MNSD FF

### Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following in the details of the dispute:

*February 2015 rent: \$835*  
*February 2015 parking: \$20*  
*February 2015 late charge: \$25*  
*March 2015 rent: \$835*  
*March 2015 parking: \$20*  
*Total amount owed: \$1,735*

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy after the effective date of the 10 Day Notice. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on February 24, 2015, to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of 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 the Landlord who provided affirmed testimony. No one was in attendance for the Tenant.

The Landlord provided oral evidence that the Tenant was served notice of this application and this hearing by registered mail on February 27, 2015. Canada Post tracking information was provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant was deemed served notice of this proceeding on March 4, 2015, in accordance with sections 89 and 90 of the Act. Therefore, I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?
3. Does the parking agreement fall within the jurisdiction of the *Residential Tenancy Act (the Act)*?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a month to month tenancy agreement that began on November 1, 2006. The rent began at \$785.00 per month and was later increased to \$835.00 plus \$20.00 for parking which was due on or before the first of each month. On November 1, 2006 the Tenant paid \$392.50 as the security deposit. On July 18, 2013, the Tenant entered into a separate agreement for two parking spaces effective August 1, 2013.

The evidence provided that when the Tenant failed to pay their February 01, 2015 rent and parking the Landlord posted a 10 Day Notice to the Tenant's door on February 06, 2015 demanding payment of \$855.00. The Tenant remains in the unit and has made a partial payment of \$900.00 on March 4, 2015. The Landlord issued the Tenant a receipt stating the money was received for "use and occupancy" only.

The Landlord stated that the outstanding balance up to the end of March 2015 is now \$860.00. As such they wish to proceed with their application for the Order of Possession and the Monetary Order for unpaid rent, late fees, and the parking fees.

The tenancy agreement provided for an addendum which included 13 additional terms. Term # 2 stated as follows:

*Arrears, late payments and N.S.F. cheques are each subject to service charge of \$50 after the 1<sup>st</sup> day of the month; each of the \$50 service charge(s) must be paid by cash, certified cheque or money order.*

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 February 9, 2015, three days after it was posted to the door, and the effective date of the Notice is **February 19, 2015.**

Section 7(1) (d) of the Regulations stipulates that a landlord may charge a non-refundable fee of \$25.00 for late payment of rent, if the tenancy agreement provides for that fee.

As a late payment fee amount is prescribed by the Regulations and this tenancy provides for a \$50.00 late payment fee, I find the Landlord cannot claim more than the \$25.00 prescribed amount, for late payment charges.

The Tenant made a payment of \$900.00 on March 4, 2015, which was received by the Landlord for the use and occupancy and not rent. For clarity, I attributed the \$900.00 as being payment for occupancy for February 2015 at \$835.00, a late payment fee for February of \$25.00, plus parking for February and March 2015 at \$40.00 (2 x \$20.00).

The \$900.00 payment was not made within the required five day period and the Tenant did not dispute the Notice. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **February 19, 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.

The Landlord claimed unpaid rent of \$835.00 that was due February 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 above noted \$900.00 payment I find the amount owed for February 1, 2015, has been paid. Therefore, I dismiss the Landlord's claim for unpaid rent for February 2015, without leave to reapply.

As noted above this tenancy ended **February 19, 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 March 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 March, 2015, in the amount of **\$835.00**. If the Landlord suffers additional loss they are at liberty to file another application for that loss.

The tenancy agreement provides for \$25.00 late payment fees in accordance with # 7 of the *Residential Tenancy Regulation*. As noted above, the \$25.00 late payment fee for February 2015 was considered paid from the \$900.00 March 4, 2015, payment. Accordingly, I dismiss the Landlord's claim for late payment charges for February 2015, without leave to reapply.

As noted above, this tenancy ended **February 19, 2015**, in accordance with the 10 Day Notice. Provisions such as late payment fees provided in a tenancy agreement are no longer in effect once a tenancy has ended. Therefore, I find the Landlord is not entitled to claim late payment fees for March 2015, and that claim is dismissed, without leave to reapply.

The Landlord claimed \$40.00 for unpaid parking fees for February and March 2015, at \$20.00 per month. As indicated above, I attributed \$40.00 from the \$900.00 March 4, 2015 payment, towards parking. Therefore, the parking fees have been paid in full, and I dismiss the Landlord's claim, without leave to reapply.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review*]

*of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

**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:

Use and Occupancy / Loss of March 2015 rent	\$ 835.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$ 885.00</b>
<b>LESS:</b> Security Deposit \$392.50 + Interest 12.21	<u>-404.71</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 480.29</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 **\$480.29**. 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: March 27, 2015

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Residential Tenancy Branch

