



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC KINSMEN HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, 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 pursuant to section 67; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0945 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord's agent attended the hearing and was 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 (including the landlord's amended application and all evidence before me) on 11 March 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 agent testified that her assistant served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 2 February 2015 by posting the notice to the tenant's door. I was provided with a proof of service document that sets out the same. On the basis of this evidence, I am satisfied that the tenant was served with 10 Day Notice pursuant to sections 88 and 90 of the Act.

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

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

The landlord applied for this application using the online platform. After making its application, but before serving the application to the tenant, the landlord amended its application to alter the particulars of its application.

The agent asked that I exercise my discretion to amend the landlord's application as set out in the landlord's amended application. This amended application was the only application served to the tenant. Further, the amended application does not result in a change to the monetary order sought. Based on these factors there is no undue prejudice to the tenant in my allowing the amendment.

At the hearing, the agent asked to amend this application to include unpaid rent for April. As the tenant reasonably ought to have known that compensation was owed if she continued to occupy the rental unit, I have allowed the amendment as there is no undue prejudice to the tenant.

### 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? 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.

The landlord and tenant entered into a tenancy agreement in November 2012. This tenancy began 1 December 2012. Market rent was set at \$1,200.00 plus an additional \$25.00 for parking for a total of \$1,225.00 monthly. The tenant was entitled to a reduction in rent on the basis for her 2014 application for rent subsidy. After consideration of her subsidy, the tenant's total monthly rent was \$535.00, including a \$25.00 contribution towards parking. The agent testified that the landlord continues to hold the tenant's security deposit in the amount of \$500.00 which was collected on 26 November 2012.

On 2 February 2015, the landlord served the 10 Day Notice to the tenant. The 10 Day Notice was dated 2 February 2015 and set out an effective date of 15 February 2015. The 10 Day Notice set out that the tenant failed to pay \$560.00 in rent that was due on 1 February 2015. The rental arrears included \$535.00 from February and \$25.00 for a late fee.

On 13 February 2015, the landlord sent a letter to the tenant regarding her outstanding rent parking contribution:

*Please be advised that your current outstanding rent from parking charge is \$125. Enclosed is your rental ledger for ease of understanding.*

The landlord claims for rental arrears totaling \$1,730.00:

Item	Amount
Unpaid February Rent	\$535.00
Unpaid March Rent	535.00
Unpaid April Rent	535.00
Unpaid Parking Portion of Past Rent	125.00
<b>Total Rent Arrears</b>	<b>\$1,730.00</b>

The agent testified that the tenant has not made any contributions towards her rent since 2 February 2015. The agent testified that there are no outstanding orders of this branch regarding this tenancy. The agent testified that the tenant has not provided receipts for emergency repairs.

### 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 15 February 2015. 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 \$1,730.00. I find that the construction of the tenancy agreement results in the parking charges being considered in rent. 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.

The agent testified that the landlord continues to hold the tenant's \$500.00 security deposit, plus interest, paid on 26 November 2012. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security 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

I issue a monetary order in the landlord's favour in the amount of \$1,280.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid February Rent	\$535.00
Unpaid March Rent	535.00
Unpaid April Rent	535.00
Unpaid Parking Portion of Past Rent	125.00
Recover Filing Fee	50.00
Offset Security Deposit	-500.00
<b>Total Monetary Order</b>	<b>\$1,280.00</b>

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

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) 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: April 13, 2015

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Residential Tenancy Branch

