



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord testified that he personally served the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on March 5, 2015. The tenant confirmed receipt of the 10 Day Notice. The landlord also testified that he served the tenant with the landlord's Application for Dispute Resolution package including Notice of Hearing on March 24, 2015 by registered mail. I accept the evidence, including Canada Post tracking information, of the landlord that the package was mailed and find the tenant deemed served with the package on March 29, 2015, 5 days after the registered mailing.

### 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 retain all or a portion of the tenant's security deposit towards any monetary award?

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

### Background and Evidence

This tenancy began on April 15, 2014 as a fixed term tenancy. The rental amount of \$1000.00 was payable on the first of each month. The landlord testified that he continues to hold a \$500.00 security deposit and a \$250.00 pet deposit paid by the tenant on March 24, 2014 and June 1, 2014 respectively. The tenant continues to reside in the rental unit.

The landlord has applied for an Order of Possession for unpaid rent for the month of March 2015. The landlord testified that the tenant did not pay rent of \$1000.00 due on March 1, 2015. The landlord testified that the tenant did not pay rent after receiving the 10 Day Notice to End Tenancy for Unpaid Rent on March 5, 2015. The landlord testified that the tenant has only paid his rent in full and on time once over the course of his tenancy. The landlord testified that the tenant currently has rental arrears totalling \$1955.00.

The landlord testified that a previous hearing for an Order of Possession and Monetary Order was held on November 4, 2014. At that hearing, the tenant did not attend. The landlord did attend the previous hearing and testified to outstanding rent for August 2014 through November 2014. The original arbitrator awarded an Order of Possession for Unpaid Rent and a Monetary Order in the amount of \$2290.00 including authorization to retain the tenant's security deposit and pet deposit towards the rental arrears.

The landlord testified that the tenant made payment to reduce the amount owing reflected in the previous monetary award. The landlord testified that the tenant has made recent payments to reduce the outstanding amounts reflected on the current application from \$3055.00 to \$955.00 reflecting rent for the months of December 2014 to March 2015. The landlord testified that the tenant has made further payments totalling \$2100.00 to reduce the outstanding rental arrears to \$955.00. The landlord is also seeking a monetary award of \$1955.00 for outstanding rental arrears from December 2014 to March 2015 as well as the unpaid April 2015 rent.

The tenant did not dispute the landlord's testimony that rent was unpaid. He testified that he had been making payments, trying to catch up on the rent. He did not dispute the dates or amounts provided by the landlord. The tenant also did not dispute that he was aware of the previous hearing regarding his failure to pay rent. The tenant agreed with the landlord that he had been provided with many chances with respect to this tenancy.

### Analysis

Given that the landlord has sought and received a previous Order of Possession, I dismiss the landlord's application for an Order of Possession. The landlord has been previously ordered as a result of the Residential Tenancy Branch Dispute Resolution hearing to retain the tenant's security deposit and pet damage deposit. Therefore, I dismiss the landlord's application to retain the tenant's security deposit and pet damage deposit.

The tenant failed to pay the March 2015 rent, despite previous warnings, a previous Residential Tenancy hearing decision and notices to end tenancy provided to him on several occasions. Given the finding at the previous hearing, the tenant was required to vacate the rental unit upon the landlord's service of the Order of Possession. The landlord has the authority, as a result of the previous hearing, to require the tenant to vacate the rental unit.

The landlord made an application under section 67 of the *Act* for a monetary award reflecting the tenant's unpaid rent. The landlord testified that the tenant had made payments towards rent since December 2014 but that rent had still not been paid in full. The landlord testified that all receipts issued to the tenant have indicated, "*for use and occupancy only*". The tenant acknowledged that he was fully aware his tenancy was scheduled to end.

I find that the landlord is entitled to receive an order for unpaid rent in the amount of \$955.00. I accept the uncontested evidence offered by the landlord that the tenant continues to pay rent late and only partially. I accept the undisputed testimony of the landlord that the tenant owes rental arrears from December 2014 to March 2015. I am issuing the attached monetary order that includes the landlord's application for \$955.00 in unpaid rent.

I also issue a monetary order including \$1000.00 for April rent. As of the date of this hearing, the landlord's undisputed sworn testimony is that the tenant has not paid rent. The tenant acknowledged a failure to pay April rent in his testimony.

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 instruct the landlord to rely on the previously issued Order of Possession from November 4, 2014 hearing.

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

Rental Arrears for December 2014 – March 2015	\$955.00
Rental Loss April 2015	1000.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$2005.00</b>

The landlord is provided with a formal Order in the above terms. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order 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: April 29, 2015

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Residential Tenancy Branch

