



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1000 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 is the landlord's son. The agent confirmed that he had full authority to act on behalf of the landlord.

The agent testified that the landlord served the tenant with the dispute resolution package on 5 March 2015 by registered mail. The agent provided me with a Canada Post tracking number 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 on 10 March 2015.

The agent testified that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 18 February 2015 by registered mail. The agent provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act on 23 February 2015.

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

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

The agent asked that I exercise my discretion to amend the landlord's application to include unpaid rent that was due 15 March 2015. As the tenant reasonably ought to have known that these amounts were owed, I have allowed the amendment as there is no undue prejudice to the tenant.

The agent asked that I amend the landlord's application to include a \$25.00 late fee. The landlord had not applied for this late fee in the application that was served to the tenant. I was not provided with a copy of the tenancy agreement. As the issue of the late fee was not properly pleaded and as I did not have any evidence that such a late fee was set out in the tenancy agreement, I declined to amend the landlord's application.

#### 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.

This tenancy began in 2011 or 2012. Monthly rent of \$1,200.00 is due on the fifteenth. The agent testified that the rent collected on the fifteenth of any given month is for the use and occupancy of the month previous, that is, rent due 15 March 2015 is for the use of the rental unit from 15 February 2015 to 14 March 2015. The agent testified that the landlord continues to hold the tenant's security deposit in the amount of \$600.00 that was collected at the beginning of the tenancy.

This tenancy was the subject of an earlier hearing before the Residential Tenancy Branch. The agent testified that there are no outstanding matters from that dispute that would impact the current application.

The agent testified that the tenant failed to pay rent due 15 February 2015 for the period 15 January 2015 to 14 February 2015. On 18 February 2015, the landlord issued a 10

Day Notice to the tenant. That notice set out that the tenant failed to pay \$1,200.00 that was due 15 February 2015. The notice set out an effective date of 28 February 2015.

The agent testified that the tenant paid the outstanding rent due 15 February 2015 on 9 March 2015. The agent testified that the tenant has not paid rent that was due on 15 March 2015.

The landlord seeks a monetary order totaling \$1,250.00:

Item	Amount
Unpaid Rent Due 15 February 2015	\$1,200.00
Payment Received 9 March 2015	-1,200.00
Unpaid Rent Due 15 March 2015	1,200.00
Recover Filing Fee	50.00
<b>Total Monetary Order Sought</b>	<b>\$1,250.00</b>

### 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 5 March 2015, the corrected effective date of the notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

I find that the landlord's acceptance of the payment on 9 March 2015 did not amount to waiver as the landlord was entitled to that full amount for the tenant's use and occupancy of the rental unit for the period 15 January 2015 to 14 February 2015.

The agent has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$1,200.00. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord testified that he continued to hold the tenant's \$600.00 security deposit, plus interest, paid in 2011 or 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 \$650.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid Rent Due 15 February 2015	\$1,200.00
Payment Received 9 March 2015	-1,200.00
Unpaid Rent Due 15 March 2015	1,200.00
Recover Filing Fee	50.00
Offset Security Deposit	-600.00
<b>Total Monetary Order</b>	<b>\$650.00</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 07, 2015

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Residential Tenancy Branch