



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 11:16 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. 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 he handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) at 9:45 a.m. on March 2, 2015. He entered into written evidence a copy of that Notice and a witnessed Proof of Service document attesting to the service of that Notice to the tenant by hand at that time and date. The landlord also testified that he handed the tenant a copy of the dispute resolution hearing package on April 2, 2015. Based on the sworn testimony of the landlord and his written evidence, I find that the tenant was served with the above documents and the accompanying written evidence in accordance with sections 88 and 89 of the *Act*.

### Issues(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 or loss of rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord testified that this periodic tenancy began about 1.5 or 2 years ago on the basis of an oral agreement with the tenant. Monthly rent is set at \$400.00, payable on the first of each month. The landlord continues to hold a \$200.00 security deposit paid by the tenant when this tenancy began.

The landlord's 10 Day Notice identified \$3,200.00 in unpaid rent as owing as of January 1, 2015. The landlord testified that the tenant has not paid any rent since April 2014. The landlord stated that the tenant has not made any payments to the landlord since receiving the 10 Day Notice.

In total, the landlord's claim for a monetary award of \$4,800.00 included unpaid rent owing for a 12-month period.

#### Analysis

The tenant failed to pay the \$3,200.00 identified as owing in the 10 Day Notice in full rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 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 March 12, 2015, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed written evidence and sworn testimony of the landlord, I find that \$3,200.00 in rent was owed to the landlord by the tenant as of January 1, 2015. Since then additional rent totalling \$1,600.00 has become due for the four months from February 1, 2015 until May 1, 2015. I issue a monetary award in the landlord's favour in the amount of \$4,800.00 for this unpaid rent.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's \$200.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee and to retain the security deposit:

| <b>Item</b>  | <b>Amount</b>     |
|--|-------------------|
| Unpaid Rent Owing as of January 1, 2015  | \$3,200.00        |
| Unpaid Rent Owing from Feb 2015 to May 2015 (4 months @ \$400.00 = \$1,600.00) | 1,600.00          |
| Less Security Deposit  | -200.00           |
| Recovery of Filing Fee for this Application                                    | 50.00             |
| <b>Total Monetary Order</b>  | <b>\$4,650.00</b> |

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 21, 2015

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Residential Tenancy Branch

