



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and loss of rent revenue, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on April 11, 2015 in the early afternoon she and witness A.S. personally served the tenant copies of the Application for Dispute Resolution and Notice of Hearing. Service took place at the rental unit.

These documents are deemed to have been served on the day of personal delivery in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and loss of rent revenue?

May the landlord retain the security deposit paid by the tenant?

### Background and Evidence

The tenancy commenced four years ago. The tenant resides in a unit in the lower portion of the landlord's home. Rent is \$600.00 per month and was due on the first day of each month. The landlord has been allowing the tenant to pay rent every other Saturday in the sum of \$265.00.

A security deposit in the sum of \$250.00 was paid four years ago.

The landlord stated that on March 31, 2015 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of April 10, 2015, was served by personal

delivery to the tenant. The landlord and witness A.S. handed the Notice to the tenant. Service occurred in the early afternoon at the tenant's rental unit.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$550.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The last regular payment made by the tenant was on February 14, 2015 in the sum of \$265.00. In mid-March the tenant made a \$200.00 payment.

The landlord is seeking compensation in the sum of \$1,655.00 for rent and rent revenue; less \$90.00 she agreed to pay the tenant for mowing the lawn on two occasions.

### Analysis

Section 90 of the Act stipulates that a document given personally is deemed served on the day of personal delivery. Therefore, I find that the tenant received the Notice to end tenancy on March 31, 2015.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on March 31, 2015, I find that the earliest effective date of the Notice is April 10, 2015.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on April 10, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has 5 days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; April 10, 2015.

In the absence of evidence to the contrary, I find that the tenant has not paid rent to April 10, 2015 and loss of rent revenue to May 21, 2015 in the sum of \$1,589.33.00 ((\$265.00 February; \$600.00 March, \$600.00 April; \$414.33.00 to May 21, 2015; less \$200.00 paid, less \$90.00.)

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$250.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an Order of possession that is effective two days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,389.33. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent and loss of rent revenue.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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

