



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding David Burr Ltd.  
and [tenant name suppressed to protect privacy]

## **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, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### 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?

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

### Background and Evidence

The tenancy commenced on September 1, 2012. Rent is \$925.00 per month, due on or before the first day of each month. A security deposit in the sum of \$460.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The tenant confirmed receipt of the 10 day Notice to end tenancy that was issued on April 8, 2015. The Notice had an effective date of April 18, 2015. The Notice was posted to the tenant's door on April 8, 2015. The tenant could not recall the date he received the Notice.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,695.00 within 5 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 5 days.

The landlord confirmed that on May 4, 2015 the tenant paid \$800.00. There was no evidence before me that the tenant was given a receipt for use and occupancy. The tenant ledger supplied as evidence indicated that past rent arrears payments had resulted in notations that payment was accepted for use and occupancy. The tenant said he usually received receipts.

The tenant confirmed that he has not paid all rent owed and has not paid June 2015 rent. The tenant said that he has often been behind with rent but the landlord has never proceeded with eviction. The ledger shows the last zero balance owed was on May 12, 2014. Since that time two \$25.00 late rent payment fees have been imposed.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3<sup>rd</sup> day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on April 11, 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 April 11, 2015, I find that the earliest effective date of the Notice is April 21, 2015.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was April 21, 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 21, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five 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. The tenant confirmed he did not dispute the Notice and that he did not pay the rent owed within five days of April 11, 2015. 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 21, 2015.

In the absence of evidence to the contrary, I find that the tenant has not paid rent owed to the effective date of the Notice in the sum of \$1,104.51 (March \$770.00 and \$334.51 (April 1 to 21, 2015.)

Residential Tenancy Branch policy suggests a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to section 44 of the Act. However if a tenant remains in possession of the premises (over-holds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. This tenancy ended effective April 21, 2015.

I find that the landlord is entitled to per diem rent in the sum of \$590.49 owed from April 22 to 30, 2015.

As rent is the most basic term of a tenancy I have amended the application to include per diem rent owed to today's date, from May 1 to June 9, 2015 inclusive in the sum of \$125.00 (May 2015 rent less \$800.00 paid May 4, 2015) and \$273.70 (to June 9, 2015). The landlord is at liberty to apply requesting compensation for any additional days the tenant occupies the unit.

The total rent and per diem rent owed is \$2,093.70 to June 9, 2015.

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 \$460.00 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 \$1,683.70. 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 rent revenue to June 9, 2015.

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: June 09, 2015

---

Residential Tenancy Branch

