



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for an Order of Possession for unpaid rent pursuant to section 55; a monetary order for unpaid rent, damage or loss 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.

The tenant applied for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46.

The tenant did not attend although the teleconference continued until 9:47 am. The landlord was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was personally served to the tenant on April 28, 2015. A proof of service document was submitted with a witness signature to support the landlord's testimony. The landlord gave sworn testimony that she personally served the tenant with the Application for Dispute Resolution hearing package on May 6, 2015 and a further evidence package on May 11, 2015 both in person to the tenant. She testified that a witness was present for service of both the Application for Dispute Resolution and the further evidence package. I accept that the tenant was duly served with the 10 Day Notice and the Application for Dispute Resolution hearing package as well as the additional evidentiary materials.

Rule 10.1 of the Rules of Procedure provides as follows:

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

**In the absence of the applicant's participation in this hearing, I order the application by the tenant (to cancel the 10 Day Notice) dismissed without liberty to reapply.**

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary order for unpaid rent, damage or loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlord provided evidence that this tenancy began October 1, 2014. She testified that no written tenancy agreement was created but that the tenant and landlord agreed to a rental amount of \$475.00 payable on the first of each month. She also testified that they agreed this tenancy would continue on a month to month basis. The landlord testified that she continues to hold a \$237.50 security deposit paid by the tenant in September 2014.

The landlord has applied for an Order of Possession for unpaid rent for the month of April 2015. The landlord testified that the tenant did not pay rent of \$475.00 due on April 1, 2015. The landlord testified that the tenant had not paid any rent since January 2015. She testified that February, March, April, May and June rent all remain unpaid by the tenant. She testified that the tenant continues to reside in the rental unit.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord provided sworn, undisputed testimony that the tenant did not pay the April 2015 rent (or any other rental arrears) after receiving the 10 Day Notice on April 28, 2015. The landlord applied for an Order of Possession.

The landlord sought a monetary award of \$1900.00 for the months of February 2015, March 2015, April 2015 and May 2015. She testified that, as of the date of this hearing, the tenant continues to reside in the rental unit and requested to further include June 2015 rent in her application. She testified that the tenant has paid no rent for June 2015 as of the date of this hearing.

Analysis

The tenant failed to pay the April 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant made an application to dispute the 10 Day Notice. However, he did so 6 days after receiving the 10 Day Notice. Pursuant to section 46(4) of the *Act*, the tenant must make an application to dispute the 10 Day Notice within five days of receiving the 10 Day Notice. Further, the tenant did not attend this hearing in support of his cross-application to cancel the notice to end tenancy. In accordance with section 46(5) of the *Act*, the tenant's failure to perfect 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 May 8, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order for unpaid rent in February, March, April, May, and June 2015. I accept the sworn and uncontested evidence offered by the landlord that; the tenant was duly served with the Notice to End Tenancy as well as all of the Application for Dispute Resolution materials. I accept the sworn and uncontested evidence of the landlord that the tenant has not paid rent since February 2015; and that he remains in the rental unit having failed to pay any rental amount since January 2015. I am issuing the attached monetary order that includes the landlord's application for \$1900.00 in unpaid rent for February, March, April and May 2015.

The landlord also applied seeking to recover June 2015 rent. Given the landlord's testimony that the tenant remains in the rental unit and that he has failed to pay June rent as of the date of this hearing, I find that landlord is also entitled to \$475.00 for June 2015 rent.

The landlord testified that she continues to hold a security deposit of \$237.50 plus any interest from the start of this tenancy to the date of this decision. There is no interest payable for this period. I will 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 grant the landlord an Order of Possession to be effective two days after notice is served to 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.

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

Rental Arrears for February – May 2015	\$1900.00
Rental Arrears for June 2015	475.00
Less Security Deposit	-237.50
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$2187.50</b>

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders 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: June 17, 2015

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Residential Tenancy Branch

