



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**OPR, MNR, MNSD, MNDC, 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 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 May 29, 2015 copies of the Application for Dispute Resolution and Notice of Hearing were personally given to the tenant. Service occurred at the basement rental unit. The landlord provided a note signed by A.H. declaring she was present as a witness when service occurred at 7 p.m.

I find that these documents were served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matters

The landlord has claimed compensation for unpaid rent plus return of \$350.00 of the security deposit returned to the tenant. I explained that the landlord cannot now claim return of the deposit funds. As the landlord was holding a security deposit in the sum of \$425.00 that amount has been reduced to \$75.00. Therefore the monetary claim beyond \$850.00 is dismissed.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent and/or Cause?

Is the landlord entitled to a monetary Order for unpaid rent in the sum of \$850.00?

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

### Background and Evidence

The tenancy commenced on January 21, 2015. Rent is \$850.00 due on the 22<sup>nd</sup> day of each month. A tenancy agreement was not signed. As set out in the preliminary matter the landlord is holding the balance of \$75.00 as a security deposit.

The landlord stated that on May 12, 2014 a 1 month Notice to end tenancy for cause was issued and posted to the tenancy's door. The Notice had an effective date of June 21; 2015. The landlord stated that her friend A.H. was present when the Notice was posted to the door at approximately 5 p.m.

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 10 days.

The tenant did not dispute the Notice and is still seen at the rental unit. The landlord lives in the upper portion of the home.

A 10 day Notice to end tenancy for unpaid rent due on May 22, 2015 was issued and served to the tenant on that date.,

### 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 1 month Notice to end tenancy on May 15, 2015.

Section 47(2) of the Act stipulates that a one month Notice to end tenancy for cause is effective one month after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on May 15, 2015, I find that the earliest effective date of the Notice is June 25, 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 is June 25, 2015.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that requires the tenant to vacate the rental unit on June 25, 2015, pursuant to section 47 of the Act.

Section 47(4) of the Act stipulates that a tenant has 10 days from the date of receiving the Notice ending tenancy to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised this right. Therefore, pursuant to section 47(5) of the Act, I find that the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice; June 25, 2015.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$850.00 due May 22, 2015 and that the landlord is entitled to compensation in that amount.

As the landlords' application has merit I find, 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 balance of the security deposit, \$75.00, 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 \$825.00 (\$850.00 - \$75.00 deposit + \$50.00 filing fee). 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.

The landlord may retain the balance of 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 22, 2015

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Residential Tenancy Branch

