



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) by the landlord for an order of possession for unpaid rent, for a monetary order for unpaid rent, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) and Application for Dispute Resolution (the “Application”) were considered. The landlord testified under oath that he served the Notice of Hearing, Application and documentary evidence on the tenant by registered mail on June 14, 2015. The landlord submitted a photocopy of the registered mail receipt with tracking number. According to the Canada Post registered mail tracking website, the tenant signed for the registered mail package on June 22, 2015. Therefore, I find the tenant was served in accordance with the *Act* on June 22, 2015, the date he signed for the registered mail package.

### Preliminary and Procedural Matter

At the start of the hearing, the landlord requested to reduce his monetary claim from \$2,600 to \$1,950 as the tenant paid some of the rent arrears owing in July 2015 in the amount of \$650 via three installments. The landlord testified that the tenant still owes \$650 in rent for the months of April, May and June of 2015 as of the date of the hearing, however, I find that payments for arrears would be applied to the earliest arrears owing which is April 2015, leaving May, June and July 2015 rent still owing. I find that a reduction of the landlord’s claim does not prejudice the tenant and permit the landlord to

reduce his claim to \$1,950 plus the \$50 filing fee, as the landlord has also claimed for the recovery of the cost of the filing fee. I also note that the landlord's application clearly indicated that he was seeking unpaid rent for July.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

The landlord testified that a month to month tenancy agreement began on December 1, 2014. The landlord stated that monthly rent in the amount of \$650 is due on the first day of each month. The landlord testified that the tenant paid a \$325 security deposit at the start of the tenancy, which he continues to hold, and if entitled under the *Act*, would like to retain towards rent owing if he is successful with his application.

The landlord testified that the 10 Day Notice for Unpaid Rent or Utilities, (the "10 Day Notice") dated May 25, 2015 was posted to the tenant's door on May 25, 2015 at approximately 6:00 p.m. The 10 Day Notice indicates that \$1,300 was due as of May 1, 2015 and had an effective vacancy date of June 4, 2015. The landlord stated that although the tenant paid \$650 in July 2015 via three installments, he was not reinstating the tenancy by accepting a payment towards the rent arrears owing by the tenant. The landlord stated that the tenant did not dispute the 10 Day Notice or pay the full amount of rent arrears owing as indicated on the 10 Day Notice.

The landlord provided a copy of the 10 Day Notice in evidence for this proceeding. The tenant continues to occupy the rental unit.

### Analysis

Based on the documentary evidence and the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of Possession** – I find that the tenant has failed to pay rent for the months of May, June and July of 2015, as the payments totaling \$650 made by the tenant in July 2015 I consider to be applied to the unpaid rent for the month of April 2015. I also find that the landlord did not reinstate the tenancy by accepting rent arrears. As the tenant did not dispute the 10 Day Notice or pay the full amount of rent as listed on the 10 Day

Notice, I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice which is listed as June 4, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on June 4, 2015 effective vacancy date listed on the 10 Day Notice.

**Claim for unpaid rent/loss of rent**– Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Further to my findings above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenant continues to occupy the unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$1,950** for unpaid rent for May and June of 2015, plus the loss of rent for July 2015. I find that while the tenancy ended on June 4, 2015, as the tenant continues to occupy the rental unit by overholding, the landlord is entitled to both the unpaid rent for the months of May and June 2015, and the loss of rent for July 2015.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$50** filing fee.

**Monetary Order** – As the landlord continues to hold the tenant's security deposit of \$325 which has accrued no interest since the start of the tenancy, and in accordance with section 72 of the *Act*, **I ORDER** the landlord to retain the tenant's full security deposit of **\$325** in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$1,675**.

### Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been ordered to retain the tenant's full security deposit of \$325 and has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of \$1,675. This order must be served

on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: July 23, 2015

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Residential Tenancy Branch

