



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD 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 or utilities, for a monetary order for unpaid rent or utilities, to retain all or a portion of the tenant’s security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide her 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”), Application for Dispute Resolution (the “Application”), and documentary evidence were considered. The agent testified under oath that the tenant was served the Notice of Hearing, Application and documentary evidence by registered mail on June 18, 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 July 7, 2015. Therefore, I find the tenant was served in accordance with the *Act* on July 7, 2015, the date he signed for the registered mail package.

### Preliminary and Procedural Matter

During the hearing, the agent requested to reduce the landlord’s monetary claim from \$3,163.75 to \$1,892.50 as the tenant paid some of the rent arrears since being served with the 10 Day Noticed dated June 2, 2015, albeit after the deadline provided for under section 46 of the *Act*. The agent testified that \$1,892.50 is comprised of unpaid July 2015 rent of \$871.25, unpaid August 2015 rent of \$871.25, plus parking fees of \$25 per month for the months of June, July and August of 2015, and late fees of \$25 per month

for the months of June, July and August of 2015. I find that a reduction in the monetary claim against the tenant does not prejudice the tenant and permitted the amendment pursuant to section 64(3) of the *Act*.

### 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?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to recover the cost of the filing fee under the *Act*?

### Background and Evidence

A fixed term tenancy agreement began on February 1, 2014 and reverted to a month to month tenancy after January 31, 2015. A copy of the tenancy agreement was submitted in evidence. Monthly rent in the amount of \$871.25 is due on the first day of each month. A copy of a rent increase document was submitted in evidence which supports that rent was originally \$850 and was increased in accordance with the *Act* to \$871.25 as of February 1, 2015. The agent testified that the tenant paid a \$425 security deposit at the start of the tenancy, which the landlord continues to hold.

The agent testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "10 Day Notice") dated June 2, 2015 was posted to the tenant's door on June 2, 2015 at approximately 11:00 a.m. The 10 Day Notice indicates that \$871.25 was due as of June 1, 2015 and had an effective vacancy date of June 15, 2015. The agent stated that the \$871.25 paid by the tenant on June 30, 2015 was accepted but a receipt for "use and occupancy only" was provided to the tenant. The agent clearly indicated that the landlord was not reinstating the tenancy. The agent 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 within 5 days of receiving the 10 Day Notice as required under section 46 of the *Act*. The agent stated that the tenant continues to occupy the rental unit and has failed to pay any rent for the months of July and August of 2015.

The landlord provided a copy of the 10 Day Notice in evidence for this proceeding.

Section 10 of the tenancy agreement indicates that late payments of rent will be subject to a \$25 late fee. A copy of a parking addendum to the tenancy agreement indicating that \$25 per month was due for parking each month was also provided in evidence.

### 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 any rent for the months of July and August of 2015. I also find that the landlord did not reinstate the tenancy by accepting rent arrears and issuing a receipt for use and occupancy only. As the tenant did not dispute the 10 Day Notice dated June 2, 2015 or pay the full amount of rent as listed on the 10 Day Notice within five days of being deemed served with the 10 Day Notice on June 5, 2015, 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 15, 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 the June 15, 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.

**Parking and late fees** – In reviewing section 10 of the tenancy agreement and the parking addendum to the tenancy agreement, I find the landlord has established a claim for both late fees and parking fees as claimed. Therefore, I grant the landlord \$25 in late fees for the months of June, July and August of 2015 for a total of \$75. In addition, I grant the landlord \$25 in parking fees for the months of June, July and August of 2015 for a total of \$75 in parking fees.

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

I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$1,942.50** for the loss of rent for July and August 2015, at \$871.25 for each of those months, \$75 in late fees, and \$75 in parking fees, plus recovery of the \$50 filing fee. I find that while the tenancy ended on June 15, 2015, as the tenant continues to occupy the rental unit by overholding, the landlord is entitled to the loss of rent for July and August of 2015.

The tenant's security deposit of \$425 has accrued no interest since the start of the tenancy, which the landlord continues to hold.

**I ORDER** the landlord to retain the tenant's full security deposit of \$425 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 **\$1,517.50**.

### 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 granted a monetary order pursuant to section 67 of the *Act* in the amount of \$2,000. This order 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: August 11, 2015

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Residential Tenancy Branch

