



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
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. The agent was given the opportunity to ask questions about the hearing process. During the hearing the agent 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”), 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 to the tenant’s rental unit where the tenant continues to reside. The landlord submitted a photocopy of the registered mail receipt with tracking number. According to the Canada Post registered mail tracking website, the package was returned to the landlord sender on July 8, 2015 and marked as “unclaimed”. Pursuant to section 90 of the *Act*, a party is deemed served five days after the date the package is mailed. I find the tenant was deemed served with the Notice of Hearing, Application and documentary evidence as of June 23, 2015, which is five days after the registered mail package was mailed. I note that refusal or failure to accept service or pick up a registered mail package is not grounds for a Review Consideration.

### Preliminary and Procedural Matters

At the outset of the hearing, the agent testified that although the Application indicated an error related to the tenant's rental unit number, I permitted the landlord to amend his application pursuant to section 64(3) of the *Act* as I find that the error was minor in nature and does not prejudice the tenant in any way. I find that the tenant would know or ought to have known as the tenant's mailing address indicated on the application was correct and that the documentary evidence and details of dispute clearly support the intent of the landlord's Application.

During the hearing, the agent also requested to amend the landlord's monetary claim from \$1,200 in unpaid rent, an NSF fee and a late fee, to include unpaid rent, NSF fees and late fees for the months since filing the application for dispute resolution on June 17, 2015. I find that based on the original details of dispute on the landlord's application, the tenant would know or ought to have known what the landlord was applying for regarding unpaid rent, NSF fees and late fees, and that such an amendment would not prejudice the tenant as a result. Accordingly, I permit the amendment of the landlord's monetary claim pursuant to section 64(3) of the *Act* to \$3,600 in unpaid rent, NSF fees and late fees for the months of June, July and August of 2015.

### 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 March 1, 2015 and is scheduled to revert to a month to month tenancy after February 29, 2016. A copy of the tenancy agreement was submitted in evidence. Monthly rent in the amount of \$1,150 was due on the first day of each month. The agent testified that the tenant paid a \$575 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 4, 2015 was posted to the tenant's door on June 4, 2015 between 2:00 p.m. and 3:00 p.m. A copy of the 10 Day Notice was submitted in

evidence. The 10 Day Notice indicates that \$1,150 was due as of June 1, 2015 and had an effective vacancy date of June 16, 2015. The agent stated that the tenant failed to pay any rent for the months of June 2015, and has since failed to pay any rent for July and August of 2015. The agent stated that the tenant continues to occupy the rental unit and did not dispute the 10 Day Notice.

Section 10 of the tenancy agreement indicates that late payments of rent will be subject to a \$25 late fee. In addition, section 10 of the tenancy agreement indicates that payments returned as NSF (non-sufficient funds) will be subject to a \$25 fee also. The agent stated that due to the tenant having a pre-authorized payment arrangement, each time that June, July and August 2015 rent was attempted to be withdrawn, each payment was returned to the landlord as NSF.

The agent stated that the landlord is seeking \$3,600 as follows:

1. Unpaid June 2015 rent	\$1,150
2. Late fee for June 2015	\$25
3. NSF fee for June 2015	\$25
4. Unpaid July 2015 rent	\$1,150
5. Late fee for July 2015	\$25
6. NSF fee for July 2015	\$25
7. Unpaid August 2015 rent	\$1,150
8. Late fee for August 2015	\$25
9. NSF fee for August 2015	\$25
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<b>TOTAL</b>	<b>\$3,600</b>

A copy of the tenant's account ledger was submitted 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 accept the undisputed testimony of the agent that the tenant has failed to pay rent for the month of June 2015 in the amount of \$1,150, continues to occupy the rental unit and that the landlord has not received any rent for the months of June, July and August of 2015. As the tenant did not dispute the 10 Day Notice dated June 4, 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 7, 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 corrects automatically under section 53 of the *Act* to June 17, 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 corrected effective vacancy date of June 17, 2015.

**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. Given the above, I find the landlord has met the burden of proof by establishing that the tenant has failed to pay \$1,150 in rent for June 2015. Furthermore, I find that the landlord has suffered a loss of rent of \$1,150 for July 2015 and \$1,150 for August 2015, given that the tenant continues to overhold the rental unit even though the tenancy ended on June 17, 2015. Based on the above, I grant the landlord a total of **\$3,450** in unpaid rent and loss of rent for the months of June, July and August of 2015. I note that the landlord's claim was supported by the ledger submitted in evidence.

**Late fees and NSF fees** – In reviewing section 10 of the tenancy agreement, I find the landlord has established a claim for the late fees and NSF fees as claimed. Therefore, I grant the landlord \$25 in late fees and \$25 for NSF fees for the months of June, July and August of 2015 for a total in late and NSF fees of **\$150**. I note that the landlord's claim was supported by the ledger submitted in evidence.

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 total monetary claim of **\$3,650** comprised of \$3,450 in unpaid rent and loss of rent, \$150 in late fees and NSF fees, plus recovery of the \$50 filing fee. I find that while the tenancy ended on June 17, 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 \$575 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 \$575 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 **\$3,075**.

### 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 tenancy ended on June 17, 2015.

The landlord has been ordered to retain the tenant's full security deposit of \$575 in partial satisfaction of the landlord's claim. The landlord 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 \$3,075. 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: August 12, 2015

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Residential Tenancy Branch

