



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROCKWELL MANAGEMENT  
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 19, 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 tenant successfully signed for and accepted the registered mail package on July 8, 2015. As a result, I find the tenant was served on July 8, 2015 with the Notice of Hearing, Application and documentary evidence in accordance with the *Act* based on the above.

### Preliminary and Procedural Matters

During the hearing, the agent requested to amend the landlord’s monetary claim from \$845 in unpaid rent and a late fee, to include unpaid rent for months since filing the application for dispute resolution on June 17, 2015, plus late fees for May, July and

August of 2015. I note that the late fee for June 2015 was already requested in the details of dispute on the Application. 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 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 \$2,130 in unpaid rent and late fees. I note the landlord has also requested recovery of the \$50 filing fee cost paid to file the Application.

### 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

The agent testified that a month to month tenancy agreement began on February 1, 2015. Monthly rent in the amount of \$820 was due on the first day of each month. The agent testified that the tenant paid a \$410 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 contained an error and should have read June 3, 2015 as an agent incorrectly wrote June 4, 2015 instead of June 3, 2015. I consider that error to be minor in nature and that pursuant to section 62 of the *Act*, I accept that the 10 Day Notice was intended to read June 3, 2015 as the date signed. The agent testified that the 10 Day Notice was posted on June 3, 2015 at 5:30 p.m. which is supported by the proof of service document submitted in evidence. A copy of the 10 Day Notice was submitted in evidence.

The 10 Day Notice indicates that \$1,620 was due as of June 1, 2015 and had an effective vacancy date of June 13, 2015. The agent stated that the \$1,620 amount was comprised of \$800 owing for unpaid May 2015 rent, plus \$820 owing for June 2015 rent. The agent stated that the tenant continues to occupy the rental unit and did not dispute the 10 Day Notice or pay the full amount owing as described in the 10 Day Notice.

The agent read from section 6 of the tenancy agreement addendum regarding late payments of rent which indicates that late payments of rent are subject to a fee of \$25 and was signed by the tenant on February 1, 2015.

The agent testified that the landlord is seeking \$2,130 as follows:

1. Unpaid portion of May 2015 rent	\$800
2. Late fee for May 2015	\$25
3. Late fee for June 2015	\$25
4. Unpaid portion of July 2015 rent	\$410
5. Late fee for July 2015 rent	\$25
6. Unpaid August 2015 rent	\$820
7. Late fee for August 2015	\$25
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<b>TOTAL</b>	<b>\$2,130</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 as described above. 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 6, 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 16, 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 16, 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 \$800 of

May 2015 rent and has suffered a loss of rent of \$410 for July 2015 and \$820 for August 2015, given that the tenant continues to overhold the rental unit even though the tenancy ended on June 16, 2015. Based on the above, I grant the landlord a total of **\$2,030** in unpaid rent and loss of rent for the months of May, July and August of 2015. I note that the landlord's claim was supported by the ledger submitted in evidence and accept the agent's undisputed testimony that the did not include later rent payments received after the Application was filed as those payments were entered after the ledger was submitted in evidence.

**Late fees** – I accept the agent's undisputed testimony regarding section 6 of the tenancy agreement addendum which sets out a \$25 late fee for late payments of rent. I find the landlord has met the burden of proof by establishing a claim for the late fees as claimed. Therefore, I grant the landlord \$25 in late fees for the months of May, June, July and August of 2015 for a total in late fees of **\$100**.

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 **\$2,180** comprised of \$2,030 in unpaid rent and loss of rent, \$100 in late fees, plus recovery of the \$50 filing fee. I find that while the tenancy ended on June 16, 2015, as the tenant continues to occupy the rental unit by overholding, the landlord is entitled to the loss of rent as claimed.

The tenant's security deposit of \$410 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 \$410 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 **\$1,770**.

### 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 \$410 in partial satisfaction of the landlord's monetary 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 \$1,770. 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 13, 2015

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Residential Tenancy Branch

