



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEIGHBOURHOOD HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

An agent for the landlord (the "agent") attended the teleconference hearing. 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 hearing.

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 that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on July 15, 2015. The agent stated that the registered mail package was addressed to the tenant's rental unit address. The agent confirmed that the tenant was residing at the rental unit address at the time the registered mail package was mailed to the tenant and that the tenant continues to occupy the rental unit. The agent provided a registered mail tracking number orally during the hearing.

According to the Canada Post online registered mail tracking website, the registered mail package was returned to the landlord as "unclaimed". Documents served by registered mail are deemed served five days after they are mailed under section 90 of the *Act*. Therefore, I accept that the tenant was deemed served with the Notice of Hearing, Application and documentary evidence on July 20, 2015. I note that refusal or neglect to accept registered mail does not constitute grounds for an Application for Review Consideration.

### 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?
- Is the landlord entitled to recover the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The agent stated the original tenancy agreement began in 2005, and then the tenant moved into a new unit in 2007, which created a new tenancy, and then moved again into her current rental unit on January 1, 2015, and as a result, the most recent tenancy agreement began on January 1, 2015. The tenant's portion of subsidized rent is currently \$356 per month and is due on the first day of each month. The tenant paid a security deposit on September 30, 2005 in the amount of \$409.50, which has accrued \$14.50 in interest to date, which results in the tenant's security deposit being a total of \$424 as of the date of this decision, which includes interest.

The agent testified that the 10 Day Notice for Unpaid Rent or Utilities, (the "10 Day Notice") was posted to the tenant's door on June 9, 2015. The 10 Day Notice indicates that \$978 was due on June 1, 2015 and had an effective vacancy date of June 22, 2015. The agent stated that the tenant did not dispute the 10 Day Notice or pay the full amount owing within 5 days after being served with the 10 Day Notice. The landlord provided a copy of the 10 Day Notice in evidence for this proceeding.

The agent stated that while the tenant did pay June 2015 rent on July 9, 2015, and July 2015 rent on July 31, 2015, the tenant has not paid rent for August 2015 and that she continues to owe arrears for previous months and as of the date of the hearing, owes a total of \$628 in unpaid rent, which includes unpaid rent for August 2015.

The landlord provided a tenant account ledger in evidence. The agent verbally requested to have the tenant's security deposit offset from any monetary amount if the landlord was granted a monetary order, if they were so entitled under the *Act*.

### 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 continues to owe a total of \$628 in unpaid rent. As the tenant did not dispute the 10 Day Notice dated June 9, 2015 and failed to pay the full amount owing within 5 days of being deemed served with the 10 Day Notice on June 12, 2015, the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective date of the 10 Day Notice which in the matter before me, was June 22, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

**Claim for unpaid rent**– The agent testified that as of the date of the hearing, the tenant owes \$628 in unpaid rent as described above. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the 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 **\$628** as indicated above.

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

Given the above, I find the landlord has established a monetary claim in the amount of **\$678**. The tenant's security deposit of \$409.50 has accrued \$14.50 in interest since the original tenancy agreement dating back to September 30, 2005, for a total security deposit of \$424 including interest, which the landlord continues to hold.

**I ORDER** the landlord to retain the full security deposit of \$424, which includes interest, 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 **\$254**.

### 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 \$424, which includes interest, 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 **\$254**. 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 28, 2015

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Residential Tenancy Branch

