



# 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 was convened as a result of the application of the landlord for dispute resolution under the *Residential Tenancy Act* (the “*Act*”). The landlord originally applied for an order of possession for unpaid rent or utilities and for a monetary order unpaid rent or utilities through the Direct Request process.

On July 22, 2015, an Adjudicator wrote an interim decision adjourning the landlord’s original Application for Dispute Resolution submitted through the Direct Request process to a participatory hearing scheduled for this date, August 31, 2015 at 2:30 p.m. Pacific Time. The interim decision dated July 22, 2015 should be read in conjunction with this decision.

The landlord attended the teleconference hearing as scheduled. The hearing process was explained to landlord and the landlord was given an opportunity to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenant personally at the rental unit on July 20, 2015 and that the tenant accepted the paperwork and that the tenant continues to occupy the rental unit. I find the tenant was duly served on July 20, 2015 in accordance with the *Act*.

### Preliminary and Procedural Matter

The landlord testified that in addition to the unpaid rent for July 2015 owed, the tenant has subsequently not paid any rent for August 2015. As a result, the landlord requested to amend the application to include rent owed for August 2015 also. The landlord also stated that the tenant continues to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware that rent is due pursuant to the tenancy agreement, I amend the application to \$1,360, which consists of \$680 owing for July 2015 rent, and \$680 in loss of rent for August 2015 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?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on March 1, 2015 and is set to revert to a month to month tenancy after August 31, 2015. Monthly rent in the amount of \$680 is due on the first day of each month. The landlord stated that the first of each month was agreed to verbally by the parties, and that this was supported by copies of cheques submitted in evidence, which indicate that the tenant previously paid rent on the first of the month before failing to pay July and August 2015 rent. The tenant paid a security deposit of \$340 at the start of the tenancy which the landlord continues to hold.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated July 2, 2015 was personally served on the tenant at the rental unit at 6:00 p.m. on July 2, 2015. The effective vacancy date listed on the 10 Day Notice is July 12, 2015 and indicates that \$680 was owed as of July 1, 2015. The landlord stated that the tenant did not dispute the 10 Day Notice or pay any rent for July or August of 2015 and continues to occupy the rental unit.

The landlord verbally made an oral request for an order of possession during the hearing. The landlord also verbally requested to retain the tenant's security deposit towards any monetary amount awarded if he was so entitled under the *Act*.

### Analysis

Based on the undisputed testimony of the landlord and the documentary evidence before me, and on the balance of probabilities, I find the following.

**Order of possession** – Section 46 of the *Act* indicates that a tenant is conclusively presumed to have accepted that a tenancy has ended in accordance with the *Act* on the effective vacancy date of the 10 Day Notice, which in the matter before me was July 12, 2015. As a result, I find that by not disputing the 10 Day Notice and not paying rent owing as indicated on the 10 Day Notice, the tenant is conclusively presumed to have accepted that the tenancy ended on July 12, 2015 and has been overholding in the rental unit ever since. Therefore, I grant the landlord an order of possession pursuant to section 55 of the *Act* **effective two (2) days** after service on the tenant.

**Unpaid rent/loss of rent** – Section 26 of the *Act* requires that a tenant pay rent when it is due in accordance with the tenancy agreement, whether or not the landlord complies with the *Act*. Therefore, I accept the landlord's undisputed testimony and I find that the tenant breached section 26 of the *Act* by failing to pay \$680 in rent for July 2015, and that the landlord also suffered a loss of rent of \$680 for the month of August 2015.

The landlord continues to hold the tenant's security deposit of \$340 which has accrued no interest since the start of the tenancy. As the landlord's claim had merit, **I grant** the landlord the recovery of the **\$50** filing fee pursuant to section 72 of the *Act*.

**I find** that the landlord has established a total monetary claim of **\$1,410** as follows:

Item 1	Unpaid July 2015 rent	\$680
Item 2	Loss of August 2015 rent	\$680
Item 3	Recovery of filing fee	\$50
<b>SUB-TOTAL</b>		<b>\$1,410</b>
<i>Less tenant's \$340 security deposit including interest</i>		<i>-( \$340 )</i>
<b>TOTAL AMOUNT OWING BY TENANT TO LANDLORD</b>		<b>\$1,070</b>

**I ORDER** the landlord to retain the tenant's full security deposit with interest of \$340 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 **\$1,070**.

Conclusion

The landlord's application is successful.

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

The landlord has established a total monetary claim of \$1,410 and has been ordered to retain the tenant's full security deposit including interest of \$340 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 \$1,070. 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 31, 2015

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Residential Tenancy Branch

