



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MND MNR MNDC 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, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord, the spouse of the landlord and the son of the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord 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”) and Application for Dispute Resolution (the “Application”) were considered. The landlord testified under oath that she served the Notice of Hearing and Application by hand delivering it via personal service on the tenant at approximately 5:00 p.m. on August 4, 2015 and that the tenant accepted the paperwork. Without any evidence to the contrary, I accept that the tenant was duly served in accordance with the *Act* on August 5, 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?
- Is the landlord entitled to recover the cost of the filing fee under the *Act*?

### Background and Evidence

The landlord stated that a month to month tenancy began on March 31, 2015. Monthly rent in the amount of \$350 was due on the fifth day of each month. A security deposit of \$175 was paid by tenant at the start of the tenancy, which the landlord continues to hold. The rental unit is a bedroom in the basement of the home, and that the other two bedrooms are rented to other tenants. The landlord stated that the tenants share a kitchen and a bathroom and the landlord does not use or have access to the kitchen or bathroom in the rental unit.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities, (the "10 Day Notice") by personal service on the tenant on July 24, 2015, and that the 10 Day Notice was dated July 24, 2015 and indicated that \$350 was owed as of June 5, 2015. The landlord stated that the tenant has failed to pay \$350 for the months of June, July, and August 2015 and eventually vacated the rental unit as of August 12, 2015. The landlord stated that the tenant did not dispute the 10 Day Notice or pay any rent since being served with the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice was August 3, 2015.

The landlord stated that she is still seeking an order of possession in case the tenant returns to the rental unit.

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

### 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 failed to pay the rent for the months of June, July or August of 2015, or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. Therefore, 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 was August 3, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

**Claim for unpaid rent**– The landlord testified that rent for the months of June, July and August of 2015 have not been paid by the tenant at \$350 per month for a total owing in unpaid rent of \$1,050. 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. I find the landlord has met

the burden of proof and I find the landlord has established a monetary claim of **\$1,050** comprised of \$350 for unpaid rent for the three months of June, July and August of 2015.

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

**Monetary Order** - I find that the landlord has established a total monetary claim of **\$1,100** comprised of \$1,050 in unpaid rent and the \$50 filing fee. **I authorize** the landlord to retain the tenant's full security deposit of \$175 in partial satisfaction of the claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing in the amount of **\$925**.

### Conclusion

The landlord's application is successful.

The landlord is 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 established a total monetary claim of \$1,100 and has been authorized to retain the tenant's full \$175 security deposit in partial satisfaction of that amount. The landlord has been granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$925. 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: September 8, 2015

---

Residential Tenancy Branch

