



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlords to keep all or part of the tenant's security deposit; For a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, served by registered mail on August 20, 2015. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep the tenant's security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The landlord testified that this tenancy started on April 01, 2015 for a fixed term tenancy which ended on June 30, 2015; thereafter reverting to a month to month tenancy. Rent for this unit is \$650.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$325.00 on March 16, 2015.

The landlord testified that the tenant failed to pay all the rent due for June, 2015 leaving an unpaid balance of \$20.00; rent for July, 2015 was paid late; and rent for August, 2015 of \$650.00 was unpaid. The landlord testified that a 10 Day Notice to End Tenancy for unpaid rent (the Notice) was served upon the tenant on August 07, 2015 by posting it to the tenant's door. The landlord has provided a copy of the Notice in evidence and the Notice has an effective date of August 17, 2015 and states that \$670.00 is outstanding in rent. The landlord testified that no rent has been received by the tenant since the Notice was served and the landlord had also applied to recover rent for September, 2015. The landlord seeks permission to amend their application to include unpaid rent for October, 2015 as the tenant has continued to live in the rental unit. The total amount of unpaid rent is now \$1,970.00.

The landlord testified that the tenancy agreement provides for a late fee of \$25.00 to be charged to the tenant for any month that rent is late. The landlord seeks to recover late fees for June, for July, as rent was not paid until July 08, 2015, for August and for September to an amount of \$100.00.

The landlord seeks an Order to keep the security deposit of \$325.00 to offset against the unpaid rent. The landlord also seeks a Monetary Order for the balance of rent and the \$50.00 filing fee. The landlord requests an Order of Possession effective within two days of service to the tenant.

### Analysis

I refer the parties to s 26 of the *Act* which states:

*26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied with the undisputed evidence before me that the tenant has failed to pay rent for June, August, September and October 2015. I will allow the landlord to amend the application to include unpaid rent for October as the tenant would be aware that rent was due on the first day of each month. Therefore the landlord is entitled to recover rent arrears to the sum of **\$1,970.00**.

With regard to the landlord's claim to recover \$100.00 in late fees; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

**7** (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for an administrative fee for late fees. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord is entitled to recover **\$100.00** in late fees from the tenant.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$325.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

I have reviewed all documentary evidence and accept that the tenant has been served with the Notice to End Tenancy pursuant to section 88 of the *Act*. The Notice is deemed to have been received by the tenant on August 10, 2015. I therefore amend the effective date of the Notice to August 20, 2015 pursuant to s. 53 of the *Act*. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the amended, effective date of the Notice and grant the landlord an Order of Possession pursuant to section 55 of the *Act*.

### Conclusion

I hereby issue a Monetary Order in the landlord's favor in the amount of \$1,800.00 under the following terms:

Item	Amount
Unpaid rent	\$1,970.00
Late fees	\$100.00
Less security deposit	(-\$325.00)
Plus filing fee	\$50.00
<b>Total Monetary Order</b>	<b>\$1,800.00</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This Order must be served on the tenant. If the tenant fails to comply with this Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This decision 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: October 30, 2015

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Residential Tenancy Branch

