



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CRAFT PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord's agent, AC ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she is the building manager for the rental building and that she had authority to represent the landlord company named in this application, as an agent at this hearing.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

The tenant confirmed personal receipt of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 23, 2015 ("10 Day Notice"), on the same date. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on August 23, 2015.

### Preliminary Issue – Amendment of Landlord's Application

The landlord initially applied for a monetary order of \$661.14, which was the unpaid rent due until the end of August 2015. Both parties agreed that the tenant owes an additional \$195.03 for rent, which represents \$65.01 for each month from September to November 2015, since the landlord's application was first filed. Both parties agreed to deal with all unpaid rent due for this tenancy at this hearing. In accordance with section 64(3)(c) of the *Act*, I amend the landlord's

application to increase the monetary award sought from \$661.14 to \$856.17, based on both parties' consent.

### Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

Both parties agreed that this tenancy began on December 1, 2011. Monthly rent in the current amount of \$985.01 is payable in advance on the last day of each month. The tenant agreed that he was provided with legal notices of rent increase which raised his monthly rent from the initial tenancy agreement amount of \$890.25 to the current amount of \$985.01. A security deposit of \$445.13 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

The landlords issued the 10 Day Notice, indicating that rent in the amount of \$661.14 was due on July 31, 2014. The notice indicates an effective move-out date of September 2, 2015. Both parties agreed that the tenant currently owes unpaid rent of \$856.17 for this tenancy until November 30, 2015.

The landlord seeks an order of possession based on the 10 Day Notice as well as a monetary order of \$856.17 for unpaid rent from the tenant. The landlord also seeks to recover the \$50.00 filing fee for this Application from the tenant.

### Analysis

Both parties agreed that the tenant failed to pay the full rent due on July 31, 2015, within five days of receiving the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on September 2, 2015, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by September 2, 2015. As this has not occurred, I find that the landlords are entitled to an **Order of Possession effective at 1:00 p.m. on November 30, 2015**. I find that although the landlord applied for an order of possession effective immediately, given the tenant's hardship of being on disability and requiring disability grants that are not accessible until the end of this month, the tenant requires additional time to secure alternative housing.

Section 26 of the *Act* requires that rent be paid on the date indicated in the tenancy agreement, which both parties agreed is the last day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Residential Tenancy Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the landlord is entitled to \$856.17 in rental arrears for this tenancy until November 30, 2015, as both parties agreed that the tenant owes this amount.

The landlord continues to hold the tenants' security deposit of \$445.13. Although the landlord did not apply to retain the security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$445.13 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this Application, I find that it is entitled to recover the \$50.00 filing fee paid for this Application.

#### Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on November 30, 2015**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$461.04 against the tenant 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.

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: November 12, 2015

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Residential Tenancy Branch

