



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 353806 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

OPR MNR MNSD 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, for a monetary order for unpaid rent, for authorization to retain the tenant’s security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed receiving the landlord’s documentary evidence and that he had the opportunity to review that evidence prior to the hearing. The tenant stated that he did not serve documentary evidence in response to the landlord’s application. I find the tenant was served in accordance with the *Act*.

### Preliminary and Procedural Matter

During the hearing, the agent requested to reduce the landlord’s monetary claim from \$2,485.00 to \$1,335.00 as the tenant paid some of the rent arrears owing, although not within the timeline provided for under section 46 of the *Act*. I find that a reduction of the landlord’s claim does not prejudice the tenant and permit the landlord to reduce their claim to \$1,335.00 plus the \$50.00 filing fee, as the landlord has also claimed for the recovery of the cost of the filing fee. This amendment is permitted 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?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?
- What should happen to the tenant’s security deposit under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on March 1, 2015. Monthly rent in the amount of \$850.00 was due on the first day of each month. A security deposit of \$425.00 was paid by tenant at the start of the tenancy, which the landlord continues to hold.

The agent confirmed service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "10 Day Notice"), dated November 5, 2015 by personal service on the tenant on November 5, 2015 which the tenant confirmed. The parties confirmed that the tenant did not dispute the 10 Day Notice which indicated that \$1,635.00 was owed in unpaid rent as of November 1, 2015 and had an effective vacancy date of November 15, 2015.

The parties agreed that while some payments have been made by the tenant, none of the payments were made within 5 days of being served with the 10 Day Notice. In addition, the agent confirmed that the landlord has not reinstated the tenancy and continues to seek and order of possession as the tenant remains in the rental unit. The parties agreed that as of the date of the hearing, the tenant continues to owe rent arrears in the amount of \$1,335.00.

The agent stated that he would be willing to have the order of possession effective as of January 31, 2016 at 1:00 p.m. to provide the tenant more time to secure a new residence.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of Possession** – There is no dispute that the tenant owes \$1,335.00 in rent arrears as of the date of the hearing. As the tenant did not dispute the 10 Day Notice or pay the full amount of rent owing within five days of receiving the 10 Day Notice, 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, November 15, 2015. Accordingly, I grant the landlord an order of possession effective **January 31, 2016 at 1:00 p.m.**

**Claim for unpaid rent** – While the agent did confirm some payments were made after the application was filed and before the hearing, the payments were not made within the timelines as required by section 46 of the *Act*. 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 rental unit. The landlord will not regain possession of the rental 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 **\$1,335.00** comprised of unpaid rent as claimed.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$50.00** filing fee.

**Monetary Order** – The landlord has established a total monetary claim of **\$1,385.00** comprise of \$1,335.00 in unpaid rent, plus \$50.00 for the recovery of the cost of the filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit which the landlord continues to hold in the amount of \$425.00 which has accrued \$0.00 in interest to date. **I authorize** the landlord to retain the tenant's full security deposit of \$425.00 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 to the landlord by the tenant in the amount of **\$960.00**.

### Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective January 31, 2016 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$1,385.00. The landlord has been authorized to retain the tenant's full security deposit of \$425.00 in partial satisfaction of the landlord's monetary claim. 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 \$960.00. 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: January 13, 2016

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Residential Tenancy Branch

