



# Dispute Resolution Services

Page: 1

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 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;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord's agent, RL ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the building manager for the rental building and that he had authority to represent the landlord company named in this application, as an agent at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on November 19, 2015, by way of registered mail. The landlord provided a Canada Post receipt and tracking number to confirm service. The landlord also provided a Canada Post delivery report indicating that the tenant received and signed for the package on November 26, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on November 24, 2015, five days after its registered mailing.

The landlord testified that he served the tenant with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 5, 2015 ("10 Day Notice"), on the

same date, by way of posting it to her rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on November 8, 2015, three days after its posting.

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

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to include all unpaid rent to date totalling \$2,850.00, including for December 2015 and January 2016. As the landlord's application was filed in November 2015, December and January rent were not yet due. The landlord indicated in the "details of the dispute" section of its Application that a future loss of rent was being sought, including for January 2016. Further, the tenant is aware that rent is due on the first day of each month as per her tenancy agreement. The tenant continued to reside in the rental unit, despite the fact that multiple 10 Day Notices required her to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend this hearing.

#### 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 retain the tenant's security deposit in partial satisfaction of the monetary award requested?

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

#### Background and Evidence

The landlord testified that this month-to-month tenancy began on July 10, 2015. Monthly rent in the amount of \$850.00 is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord testified that the tenant continues to reside in the rental unit. The landlord provided a copy of the written tenancy agreement for this hearing. The landlord issued multiple 10 Day Notices for unpaid rent in August, September and October 2015. The landlord made its application for an order of possession following the most recent 10 Day Notice from November 2015, indicating that rent in the amount

of \$1,650.00 was due on November 1, 2015. The notice indicates an effective move-out date November 15, 2015.

The landlord seeks a monetary order of \$2,850.00 for unpaid rent and provided a rent ledger with its Application. The landlord indicated that rent of \$800.00 is unpaid for October 2015, as the tenant only made a payment of \$50.00 in the previous month in September 2015, which was credited to the tenant in October 2015. The landlord stated that rent of \$350.00 is unpaid for November 2015, as the tenant only made a payment of \$500.00 on November 17, 2015 towards the total rent of \$850.00. The landlord indicated that rent of \$850.00 is unpaid for each of December 2015 and January 2016, as the tenant did not make any payments towards rent for these months.

The landlord is also seeking to recover the \$50.00 filing fee for this Application from the tenant.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on November 1, 2015, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received 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 November 18, 2015, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by November 18, 2015. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first 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* ("*Regulation*") or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent totalling \$2,000.00 from October to December 2015. Therefore, I find that the landlord is entitled to \$2,000.00 in rental arrears for the above period.

The tenant was required to vacate the rental unit by November 18, 2015, the corrected effective date on the 10 Day Notice. As per the landlord's evidence, the tenant continues to reside in the rental unit, causing loss to the landlord under section 7(1) of the *Act*. Rent of \$850.00 was due on January 1, 2016. Therefore, I find that the landlord is entitled to \$850.00 in rental arrears for the entire month of January 2016, despite the fact that this hearing was held on January 13, 2016. I make this finding because the landlord may have to serve the tenant with the order of possession, possibly enforce the order of possession, examine the rental unit, repair any potential damage, and possibly advertise and attempt to re-rent the unit.

The landlord continues to hold the tenant's security deposit of \$425.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$425.00 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 the landlord is entitled to recover the \$50.00 filing fee paid for the Application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 \$2,475.00 against the tenant as follows:

Item	Amount
Unpaid October 2015 Rent	\$800.00
Unpaid November 2015 Rent	350.00

Unpaid December 2015 Rent	850.00
Loss of January 2016 Rent	850.00
Less Security Deposit	-425.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Award</b>	<b>\$2,475.00</b>

The landlord is provided with a monetary order in the amount of \$2,475.00 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.

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: January 13, 2016

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Residential Tenancy Branch

