



# 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 or utilities, for a monetary order for unpaid rent or utilities, to retain all or a portion of the tenant’s security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) attended the teleconference hearing and gave affirmed testimony. During the hearing the agent 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”), Application for Dispute Resolution (the “Application”), and documentary evidence were considered. The agent testified under oath that the tenant was served the Notice of Hearing, Application and documentary evidence by registered mail on November 20, 2015 and was addressed to the rental unit address. The landlord submitted a photocopy of the registered mail receipt with tracking number. According to the Canada Post registered mail tracking website, the registered mail package was returned to the sender and marked as “unclaimed”. Section 90 of the *Act* indicates that documents served by registered mail are deemed served five days after they are mailed. Therefore, I find the tenant was deemed served in accordance with the *Act* on November 25, 2015, which is five days after the registered mail was mailed to the tenant and the tenant continues to occupy the rental unit.

### Preliminary and Procedural Matters

During the hearing, the agent requested to reduce the landlord’s monetary claim from \$2,850.00 to \$1,800.00 as the tenant paid some of the rent arrears since being served with the 10 Day Noticed dated November 5, 2015, albeit after the deadline provided for

under section 46 of the *Act*. I find that a reduction in the monetary claim against the tenant does not prejudice the tenant and permitted the amendment pursuant to section 64(3) of the *Act*. The agent was advised; however, that due to the landlord not applying for parking costs and the fact that there was no parking agreement submitted in evidence, \$250.00 of the \$1,800.00 claim was not being heard at this proceeding as I find it would be procedurally unfair to the tenant as the landlord did not original include parking costs in their details of dispute, nor did they supply a copy a signed parking agreement with the tenant.

Given the above, the total amount of unpaid rent and loss of rent is \$1,550.00 as of the date of the hearing, plus the landlord's request for the recovery of the cost of the filing fee of \$50.00. I note that the amount of \$1,550.00 includes December 2015 and January 2016 loss of rent also and any payments made by the tenant up to the date of the hearing.

#### 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?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to recover the cost of the filing fee under the *Act*?

#### Background and Evidence

A copy of the tenant agreement was submitted in evidence. The month to month tenancy began on March 1, 2013. Monthly rent in the amount of \$900.00 is due on the first day of each month. The agent testified that the tenant paid a \$450.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The agent testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "10 Day Notice") dated November 5, 2015 was posted to the tenant's door on November 5, 2015. The 10 Day Notice indicates that \$1,900.00 was due as of November 1, 2015 and had an effective vacancy date of November 15, 2015. While the agent stated that the tenant paid some of the rent arrears owed, the agent stated that the tenant did not dispute the 10 Day Notice or pay the full amount of rent arrears owing as indicated on the 10 Day Notice within 5 days of receiving the 10 Day Notice as required under section 46 of the *Act*. The agent stated that the tenant continues to occupy the rental unit and owes a total amount of \$1,550.00. The agent stated that the

landlord has not reinstated the tenancy at any time and continues to seek an order of possession.

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

### Analysis

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

**Order of Possession** – I find that the tenant currently owes \$1,550.00 in unpaid rent and loss of rent as claimed by the landlord. I also find that the landlord did not reinstate the tenancy by accepting rent arrears by way of partial payments from the tenant since being served with the 10 Day Notice. As the tenant did not dispute the 10 Day Notice dated November 5, 2015 or pay the full amount of rent as listed on the 10 Day Notice within five days of being deemed served with the 10 Day Notice, I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice which automatically corrects under section 53 of the *Act* to November 18, 2015. Accordingly, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

**Claim for unpaid rent/loss of rent**– Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Further to my findings 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 unit. The landlord will not regain possession of the unit until after service of the order of possession. Based on the undisputed testimony of the agent, I find that that the tenant owes **\$1,550.00** in unpaid rent and loss of rent as of January 14, 2016.

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

I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$1,600.00** comprised of \$1,550.00 for unpaid rent and loss of rent, plus the recovery of the cost of the \$50.00 filing fee. I find that while the tenancy ended on November 18, 2015, as the tenant continues to occupy the rental unit by overholding. If the tenant is overholding beyond January 2016, the landlord is at liberty to apply for additional compensation for loss under the *Act*. The tenant's security

deposit of \$450.00 has accrued no interest since the start of the tenancy, which the landlord continues to hold.

**I authorize** the landlord to retain the tenant's full security deposit of \$450.00 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 by the tenant to the landlord in the amount of **\$1,150.00**.

### Conclusion

The landlord's application is successful.

The landlord has been 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 been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$1,150.00 and has been authorized to retain the tenant's full security deposit of \$450.00. 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: January 14, 2016

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Residential Tenancy Branch

