



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Firstservice Residential BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent and NSF fee, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### 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 and a \$35.00 NSF fee?

May the landlord retain the security deposit paid by the tenant?

### Background and Evidence

The tenancy commenced on October 1, 2015, rent is \$1,050.00 per month, due on the first day of each month. The landlord is holding a security deposit in the sum of \$525.00.

The tenancy agreement supplied as evidence includes clause 3a) imposing a \$35.00 NSF fee.

The tenant attended the hearing and confirmed receipt of a 10 day Notice to end tenancy for unpaid rent on November 12, 2015. The Notice was issued and posted to the door on November 12, 2015 and had an effective date of November 22, 2015.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,085.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant confirmed that no rent has been paid since October 2015. The tenant does plan on vacating the rental unit.

In accordance with section 8.4 of the Residential Tenancy Branch Rules of Procedure the application was amended to include a claim for January 2016 rent. As rent is the most basic term of a tenancy I find this amended is not prejudicial to the tenant.

### Analysis

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on November 22, 2015, pursuant to section 46 of the Act. The tenant confirmed receipt of the Notice on that date.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant confirmed that rent has not been paid since October 2015 and that he did not dispute the Notice. Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; November 22, 2015.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$3,150.00 from November 1 to 22, 2015 inclusive and per diem rent from November 23, 2015 to January 31, 2016 and that the landlord is entitled to compensation in that amount. I find the landlord is entitled to per diem rent until the end of January 2016 as it is unlikely possession of the unit will be obtained before that time.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$525.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an Order of possession that is effective two days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,675.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As the NSF fee indicated as term of the tenancy agreement exceeds the allowable 25.00 fee set out in section 7(1)d) of the Regulation, I dismiss the claim for the NSF fee.

### Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

The claim for the NSF fee is dismissed.

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 22, 2016

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Residential Tenancy Branch

