



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GREY MOUNTAIN HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC

### Introduction

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

- an order of possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by its agent.

The agent testified that the landlord served the tenant in person with the dispute resolution package on 6 December 2015. The tenant was initially unsure as to whether she had received these documents, but eventually the tenant confirmed receipt of the documents contained in the dispute resolution package. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to subsection 89(1) of the Act.

### Issue(s) 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 and losses arising out of this tenancy?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the witnesses, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began in 2011 or 2012. Monthly rent of \$575.00 is due on the first. The landlord continues to hold the tenant's security deposit totalling \$287.50.

On 3 October 2015, the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) to the tenant. The 10 Day Notice was dated 3 October 2015 and set out an effective date of 13 October 2015. The 10 Day Notice set out that the tenant failed to pay \$850.00 in rent that was due on 1 October 2015. The rental arrears included \$275.00 from September's rent and \$575.00 from October's rent.

The agent testified that he served the tenant with the 10 Day Notice on 3 October 2015 either by posting that notice to the tenant's door or in person. The agent testified that he could not remember positively whether he was able to give the document to the tenant personally, but recalls that he was there with a witness AT. The agent testified that if he could not leave the documents with the tenant personally, he would have posted the documents to the tenant's door. Both types of service are indicated on the 10 Day Notice. The tenant denied receiving the notice.

The tenant admits that she has withheld rent since September. The tenant testified that the rental unit has multiple deficiencies and this is why she is withholding rent.

The agent testified that he is not aware of any reason that would entitle the tenant to deduct any amount from rent. The agent testified that he has not received any receipts for emergency repairs from the tenant. The agent testified that there are no prior orders of the Residential Tenancy Branch regarding this tenancy.

The landlord claims for rental arrears totaling \$2,000.00:

<b>Item</b>	<b>Amount</b>
Unpaid September Rent	\$275.00
Unpaid October Rent	575.00
Unpaid November Rent	575.00
Unpaid December Rent	575.00
<b>Total Monetary Order Sought</b>	<b>\$2,000.00</b>

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are various provisions of the Act that permit a tenant to deduct amounts from rent:

- Subsection 19(2) permits a tenant to deduct amounts from rent to recover the excess amounts of a security deposit that did not comply with the Act.
- Subsection 33(7) permits a tenant to deduct amounts from rent for the costs of emergency repairs.
- Subsection 43(5) permits a tenant to deduct the amount of a rent increase which did not comply with the Act from rent.
- Subsection 51(1.1) permits a tenant to deduct one month rent where the landlord has issued a notice to end tenancy pursuant to section 49.
- Subsection 65(1) and subsection 72(2) permit a tenant to deduct rent to recover an amount awarded in an application before this Branch.

There are no other deductions from rent permitted under the Act or regulations. On this basis, the tenant was not entitled to withhold rent on the basis of perceived deficiencies in the rental unit without first obtaining an order from the Residential Tenancy Branch permitting the deduction.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The agent is unsure whether he served the 10 Day Notice by posting it to the tenant's door or in person, but is certain that he did serve the notice. The tenant denies receiving the notice. There was no corroborating evidence provided for either version of events. On balance, I found the evidence of the agent more credible than the tenant's as I found the agent's testimony more plausible. On this basis, I find that the tenant was served on 3 October 2015 by posting the 10 Day Notice to the tenant's door.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 16 October 2015, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The tenant did not dispute that she has unpaid rental arrears totaling \$2,000.00. I find that the landlord has proven its entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord testified that he continued to hold the tenant's \$287.50 security deposit. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,712.50 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid September Rent	\$275.00
Unpaid October Rent	575.00
Unpaid November Rent	575.00
Unpaid December Rent	575.00
Offset Security Deposit	-287.50
<b>Total Monetary Order</b>	<b>\$1,712.50</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 25, 2016

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Residential Tenancy Branch

