



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Residential Tenancy Act (Act)*; served by registered mail on November 04, 2015. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the Residential Tenancy Act. All of the testimony and documentary evidence was carefully considered.

### 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?
- Is the landlord permitted to keep the tenant's security deposit?

### Background and Evidence

The landlord testified that this was a verbal tenancy agreement that started on May 01, 2014 for a month to month tenancy. Rent for this unit was \$750.00 per month, this was increased to \$768.75 a month on July 01, 2015. Rent is due on the first day of each month. The tenant paid a security deposit of \$375.00 on April 29, 2014.

The landlord testified that the tenant was served a Notice of Rent Increase on March 28, 2015 this was hand delivered to the tenant and showed that the landlord was increasing the tenant's rent by the amount of \$18.75 per month starting on July 01, 2015. A copy of this Notice has been provided in documentary evidence by the landlord. The landlord testified that the tenant has failed to pay the increase in rent for July, August, September, October, November and December, 2015.

The landlord testified that a 10 Day Notice to End Tenancy for unpaid rent (the Notice) was served upon the tenant on October 05, 2015 by serving it to an adult who resides with the tenant in the rental unit. The landlord has provided a copy of the Notice in evidence and the Notice has an effective date of October 15, 2015. The landlord testified that she made an error in the amount owed on the Notice. The landlord had written that \$768.75 was owed for July when in fact the amount actually owed on October 01, 2015 was \$75.00. The landlord testified that the tenant said she would pay the outstanding rent but has failed to do so. The landlord testified that the tenant has been paying the rent of \$750.00 each month and it is just the increase that has not been paid. The landlord testified that the tenant was informed that the rent accepted since the Notice was served was accepted for use and occupancy only. The landlord seeks permission to amend their application to include unpaid rent for November and December, 2015 of \$37.50. The total amount of unpaid rent is now \$112.50.

The landlord seeks an Order to keep part of the security deposit to offset against the unpaid rent. The landlord also seeks to recover the \$50.00 filing fee. The landlord requests an Order of Possession effective on January 31, 2016.

### Analysis

I refer the parties to s 26 of the *Act* which states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied with the undisputed evidence before me that the tenant has failed to pay the increased rent from July to December, 2015. I will allow the landlord to amend their application to include the unpaid portion of rent for November and December, 2015 as the tenant would be aware that rent of \$768.75 was due on the first day of each month. Therefore the landlord is entitled to recover rent arrears to the sum of **\$112.50**.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

I Order the landlords pursuant to s. 38(4)(b) of the *Act* to keep part of the tenant's security deposit of **\$162.50** in payment of the rent arrears and filing fee. No further Monetary Order will be issued to the landlord.

I have reviewed all documentary evidence and accept that the tenant has been served with the Notice to End Tenancy pursuant to section 88 of the *Act*. The Notice is deemed to have been received by the tenant on October 05, 2015. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy

would end. The tenant did not pay the outstanding rent within five days nor did the tenant apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an Order of Possession pursuant to section 55 of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlords' amended monetary claim. The landlord may retain the amount of **\$162.50** from the security deposit. The balance of the security deposit must be returned to the tenant or dealt with under s. 38 of the *Act*.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on January 31, 2016. This Order must be served on the Respondent. If the Respondent fails to comply with this Order, the Order may be filed in the Supreme Court of British Columbia 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 04, 2016

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Residential Tenancy Branch

