



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MND, FF

### Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for compensation for damage to the unit, site or property, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by posting it on the door on December 12, 2015. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is there damage to the unit and are the Landlords entitled to compensation?
5. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on March 20, 2015 as a 1 year fixed term tenancy with an expiry date of April 30, 2016. Rent is \$2,300.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$1,150.00 on March 19, 2015.

The Landlord said that the Tenant did not pay \$2,300.00 of rent for December, 2015, 2016 when it was due. As a result, on December 5, 2015 the Landlord posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 5, 2015 on the door of the Tenant's rental unit. The Landlord said the Tenant paid the December, 2015 rent on December 29, 2015 but has unpaid rent for January, 2016 in the amount of \$2,300.00.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested an Order of Possession for as soon as possible if the Landlord is successful in this application.

The Landlord also sought to recover damage to the mail box that the Tenant did in the amount of \$111.30 and a Strata fine in the amount of \$200.00 that the Landlord paid for the Tenant due to the Tenant's vehicle leaking oil in the parking garage. The Landlords submitted paid receipts for their claims

The Landlord also requested to recover the filing fee of \$50.00 for this application.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on December 8, 2015. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than December 13, 2015.

I find that the Tenant has not paid the overdue rent by December 13, 2015 and has not applied for dispute resolution. Consequently, I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for January, 2016, in the amount of \$2,300.00. I further find that the Landlord is entitled to recover damages of \$111.30 for the mail box damage and \$200.00 for the Strata fine.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$2,300.00	
Damage to mail box:	\$ 111.30	
Strata fine	\$ 200.00	
Recover filing fee	\$ 50.00	
Subtotal:		\$2,661.30

Less:	Security Deposit	\$1,150.00	
	Subtotal:		\$1,150.00
	Balance Owing		\$1,511.30

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,511.30 have been issued to the Landlords. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 18, 2016

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Residential Tenancy Branch

