



# 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 in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on February 22, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

On March 07, 2016 the Landlord submitted 24 pages of evidence and a DVD to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenant's door on March 07, 2016. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent; and to keep all or part of the security deposit?

### Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on the summer of 2012;
- the Tenant was required to pay monthly rent of \$500.00 by the first day of each month;
- the Tenant paid a security deposit of \$250.00;
- the Tenant did not pay any rent for February, March, or April of 2016;
- the Tenant only paid \$400.00 in rent for December of 2015;
- on February 04, 2016 she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of February 15, 2016, on the door of the rental unit;
- the Ten Day Notice to End Tenancy declared that the Tenant owed \$500.00 in rent that was due on February 01, 2016;
- she has not seen the Tenant in the rental unit in April of 2016;

- there is still a large amount of personal property in the rental unit;
- the Tenant has not told the Landlord she has vacated the rental unit; and
- the Tenant has not returned the keys to the rental unit.

### Analysis

On the basis of the undisputed evidence I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$500.00 by the first day of each month.

On the basis of the undisputed evidence I find that the Tenant still owes \$100.00 in rent for December of 2015 and \$500.00 in rent for March of 2016. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$600.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on February 04, 2016.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on February 07, 2016.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on February 07, 2016 I find that the earliest effective date of the Notice was February 17, 2016.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was February 17, 2016.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit on February 17, 2016, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between February 17, 2016 and February 29, 2016, I find that the Landlord has been fully compensated for that period.

As the Tenant has left a significant amount of property in the rental unit; has not informed the Landlord that she has vacated the rental unit; and has not returned the keys to the rental unit, I find it reasonable to conclude that she is still occupying the rental unit. I therefore find that the Tenant must compensate the Landlord for the time she remained in possession of the rental unit, which includes:

- \$500.00 for March of 2016; and
- 11 days of compensation for April of 2016, at a daily rate of \$16.67, which equates to \$183.37.

I decline to award compensation for the entire month of April, as it is entirely possible the Tenant will vacate the unit today. The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for loss of revenue if the Tenant does not vacate the rental unit by April 11, 2016.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon 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.

The Landlord has established a monetary claim, in the amount of \$1,383.37, which is comprised of \$1,283.37 in unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$250.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,133.37. 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.

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: April 11, 2016

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Residential Tenancy Branch