



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      mnr, opr, mnsd, ff

### Introduction

The landlord applies for an Order of Possession, a Monetary Order for unpaid rent and loss of rental income, and an order to retain the security deposit.

The landlord was represented at the hearing, but the tenant did not attend. I accept that the tenant was properly served with the Application for Dispute resolution hearing package and the notice of this hearing by way of registered mail sent to the subject residential rental unit. Such service satisfies the provisions of Section 89(1) of the Residential Tenancy Act and the tenant is deemed to have received these documents by virtue of Section 90(a).

### Issues to Be Decided

- Is the Notice to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is money payable by the tenant to the landlord?
- If so, is the landlord entitled to retain the deposit in partial satisfaction of the amount owing?

### Background and Evidence

This tenancy began April 1, 2014. Current rent of \$895.00 is due on the 1<sup>st</sup> day of each month. A security deposit of \$437.50 was paid at the start of the tenancy. On February 17, 2016 the landlord served the tenant with a 10-Day Notice to End Tenancy, after not receiving rent for the month of February. The tenant did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice. The tenant remains in possession, and has paid no further rent. The landlord's last inspection of the premises indicates that the rental unit could not be immediately re-rented, as cleaning and repair will be required once they recover possession.

### Analysis

By virtue of section 46(5)(a) of the Residential Tenancy Act, in the absence of a required rental payment after being served with a 10 Day Notice to End Tenancy, or a dispute of that Notice within the 5 day period set out in the Notice, the tenants are conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice. The effective date of the Notice has passed and no rent has been paid since the Notice was given. The tenancy has therefore ended, and the landlord has established a right to possession.

The landlord is entitled to recover compensation equal to three months of rent (for February, March and April). This includes unpaid rental arrears for February, and compensation for the tenant overholding after the end of the tenancy (pursuant to section 57(1)(3) of the Residential Tenancy Act. Even though the landlord may recover possession prior to the end of April, loss of rental income is proven to the end of April, as I accept that the tenant will be liable for the time required by the landlord to clean and make any necessary repair after the tenant has vacated. The tenant knows or should have known that by overholding into April, is therefore liable for the landlord's loss of rent for April. Although a loss of rent for April was not claimed in the landlord's Application, Rule 4.2 of the Rules of Procedure permits an application to be amended at the hearing, in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. Such amendment is therefore appropriate and is ordered in this case. Since the landlord is successful with this claim, it is also appropriate that the landlord recover the \$100.00 filing fee from the tenant, and to retain the security deposit in partial satisfaction of the sum found owing by the tenant.

### Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$2,685.00 representing the rental arrears, overholding rent and loss of rental income for February, March and April, and the recovery of the \$100.00 filing fee, for a total of \$2,785.00.

I further order, pursuant to section 38(1)(d), that the full amount of the \$437.50 deposit be retained by the landlord, in partial satisfaction of the monetary award noted above. The remaining balance of the award of \$2,347.50 must be paid immediately by the tenant to the landlord.

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