



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by personal service on March 14, 2016 at 2:00 p.m. at the tenant's place of employment, which was witnessed by A.K. and signed for by the tenant. A copy of the proof of service document was also submitted in evidence. Based on the above, I find the tenant was duly served with the Notice of Hearing, Application and documentary evidence on March 14, 2016.

### Preliminary and Procedural Matter

During the hearing, the landlord requested to reduce her monetary claim from \$2,360.00 to \$2,060.00 as the tenant paid her \$300.00 the day before the hearing. The landlord was clear that she was not reinstating the tenancy and that she had a right to accept rent owing. As a reduction of the monetary claim does not prejudice the tenant, the

landlord was permitted to reduce her claim to \$2,060.00 which the landlord indicated is comprised of rent arrears for the months of January, February, March and April of 2016.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on February 9, 2015 and reverted to a month to month tenancy after February 9, 2016. Monthly rent in the amount of \$1,000.00 was due on the first day of each month. The tenant paid a security deposit of \$500.00 at the start of the tenancy which the landlord continues to hold.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated January 25, 2016, by personal service on the tenant as the tenant's place of business on January 25, 2016 at 3:00 p.m. and was witnessed by K.S. The 10 Day Notice included an effective vacancy date of February 14, 2016 and indicated that \$1,000.00 was owed as of January 1, 2016. The tenant did not dispute the 10 Day Notice and did not pay the full amount of rent owed within five days of receiving the 10 Day Notice.

The landlord stated that the tenant only paid a small portion by the end of January 2016 and as of the date of the hearing, continues to owe \$2,060.00 in rent arrears and loss of rent.

The landlord submitted the tenancy agreement, proof of service documents, 10 Day Notice, and the tenant's application to rent in evidence.

### Analysis

Based on the undisputed documentary evidence and oral testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the Notice is listed as February 14, 2016. I find the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was February 14, 2016. The tenant continues to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant. I find that the landlord did not re-instate the tenancy by accepting partial rent arrears payments as the landlord has the right not to suffer additional losses and made it clear during the hearing that she was not reinstating the tenancy.

**Claim for unpaid rent and loss of rent** – Firstly, as the tenant was served and did not attend the hearing, I find the Application of the landlord is unopposed by the tenant. The landlord testified that \$2,060.00 in rent arrears and loss of rent is owed by the tenant as of the date of the hearing. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$2,060.00** comprised of rent arrears.

The landlord is holding a security deposit of \$500.00 which was paid by the tenant at the start of the tenancy and has accrued no interest since the start of the tenancy. As the landlord has succeeded with their application, **I grant** the landlord the recovery of the filing fee in the amount of **\$100.00**.

**Monetary Order** – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit plus interest as follows:

Rent arrears owed by tenant	\$2,060.00
Filing fee	\$100.00
<b>Subtotal</b>	<b>\$2,160.00</b>
<i>(Less tenant's security deposit including interest)</i>	<i>-\$500.00</i>
<b>TOTAL BALANCE OWING BY TENANT TO LANDLORD</b>	<b>\$1,660.00</b>

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$2,160.00 as indicated above. The landlord is authorized to retain the tenant's full security deposit of \$500.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$1,660.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 21, 2016

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Residential Tenancy Branch