



# 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      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied: to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee for the cost of making the Application from the Tenant.

An agent for the Landlord (the "Landlord") and the building manager appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance by the Tenant during the 20 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord explained that the Tenant goes by two names which are each spelt differently. Therefore, the Landlord served the Tenant the documents for this hearing individually to each of the Tenant's name to the rental unit address. The Landlord testified that she served a copy of the Application and the Notice of Hearing documents by registered mail on May 27, 2016. The Landlord provided a copy of the Canada Post tracking numbers into evidence to verify this method of service. The Landlord also explained that she had contacted the Tenant's mental health team and had informed them of this hearing and that the mental health team was going to make attempts to inform the Tenant of this hearing.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the required documents on June 1, 2016 pursuant to

the Act. I also find that the Landlord made extra attempts outside of the requirements of the Act to inform the Tenant of this hearing. As a result, the hearing continued to hear the undisputed evidence in the absence of the Tenant.

At the start of the hearing, I allowed the Landlord to amend the Application to include unpaid rent for June 2016 as this was also alleged to be unpaid by the Tenant. Pursuant to my authority under Section 64(3) (c) of the Act and Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I granted this amendment to the Landlord's Application.

#### 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 entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

#### Background and Evidence

The Landlord testified that this tenancy started on May 1, 2002. A written tenancy agreement was completed for a month to month tenancy. The Tenant provided a security deposit of \$285.00 at the start of the tenancy. Pursuant to the Deposit Interest Calculator on the Residential Tenancy Branch website, the amount of interest accrued on the Tenant's security deposit at the time of this hearing is determined to be \$10.09. This amount was confirmed by the Landlord during the hearing. Therefore, the Landlord holds a total of \$295.09 in the Tenant's security deposit. Rent for this tenancy started off at \$570.00 payable on the first day of each month and through a number of yearly rental increases the current amount of rent is \$847.00.

The Landlord testified that by May 2016, the Tenant was in rental arrears of \$479.00 which had accumulated since 2012. The Tenant then failed to pay rent for May 2016. As a result, the Landlord and the building manager served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on May 9, 2016 by attaching it to the Tenant's door.

The Notice was provided into written evidence and shows an expected date of vacancy of May 19, 2016 due to \$1,336.00 in unpaid rent due on May 1, 2016. The Landlord also provided a Proof of Service Document which was signed by a building manager who also testified to service in this manner during the hearing.

The Landlord testified that the Tenant has not disputed the Notice and the current rental arrears being claimed is \$2,173.00. As a result, the Landlord now seeks to recover unpaid rent and end the tenancy.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement whether or not the landlord complies with the Act. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed oral and written evidence that the Notice was served to the Tenant by attaching it to the Tenant's door on May 9, 2016.

Section 90(c) of the Act allows documents served in this manner to be deemed received three days later. Therefore, I find that the Tenant is deemed to have received the Notice on May 12, 2016. Therefore, the Tenant had until May 17, 2016 to pay rent or make an Application to dispute the Notice. There is no evidence before me that the Tenant did either or has vacated the rental unit by the vacancy date detailed on the Notice.

As a result, I find that the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice which is corrected to May 22, 2016 pursuant to Section 53 of the Act.

As this date has now passed and the Tenant is still residing in the rental unit without paying rent, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court.

I find the Landlord is also entitled to unpaid rent in the amount of \$2,173.00 claimed. As the Landlord has been successful in this matter, the Landlord is also entitled to recover the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$2,273.00.

As the Landlord already holds the Tenant's \$295.09 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is granted a Monetary Order for the remaining balance of \$1,977.91. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court. Copies of the above orders for service and enforcement are attached to the Landlord's copy of this decision.

### Conclusion

The Tenant has failed to pay rent pursuant to the Act and the tenancy agreement. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord is allowed to keep the Tenant's security deposit and is granted a Monetary Order for the remaining balance of \$1,977.91.

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: June 23, 2016

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Residential Tenancy Branch