



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC,  
VANCOUVER EVICTION SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MSND, MNDC, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0942 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlords' agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that the landlords served the tenant with the dispute resolution package on 2 May 2016 by registered mail. The landlords provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that she served the tenant with the 10 Day Notice on 8 April 2016 by posting that notice to the tenant's door. On the basis of this evidence, I am satisfied that the tenant was deemed served with 10 Day Notice pursuant to sections 88 and 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent and losses? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy began approximately four years ago. There is no written tenancy agreement. Monthly rent of \$875.00 is due on the first. The landlords continue to hold a security deposit in the amount of \$437.50, which was collected at the beginning of the tenancy.

The landlords were successful in securing an order of possession for unpaid rent and monetary order against the tenant in September 2015. The parties reached a mutual agreement to continue the tenancy. The tenant satisfied the September monetary order. As of 31 March 2016 the tenant had a rent overpayment of \$5.00. The tenant did not pay rent due 1 April 2016 or 1 May 2016. The landlords have not received any payments towards rent for either April or May 2016.

On 8 April 2016, the landlords issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 8 April 2016 and set out an effective date of 19 April 2016. The 10 Day Notice set out that the tenant failed to pay \$875.00 in rent that was due on 1 April 2016. The landlords did not account for the \$5.00 credit in that notice.

The agent testified that she was not aware of any reason that would entitle the tenant to deduct any amount from rent.

The landlords claim for rental arrears totaling \$1,745.00:

<b>Item</b>	<b>Amount</b>
Rent Credit	-\$5.00
April Rent	875.00
May Rent	875.00
<b>Total Rent Arrears</b>	<b>\$1,745.00</b>

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlords neglected to account for the \$5.00 credit on the 10 Day Notice. At the hearing, the agent asked to amend the notice to reflect the correct rent arrears.

Subsection 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act. In this case, the landlords mistakenly failed to include a credit to rent arrears in the amount of \$5.00. This mistake does not go to the substance of the 10 Day Notice, that is, a 10 Day Notice could have still been validly issued for April's rent on 8 April 2016. Further, the amount is negligible. For these reasons, I am exercising my discretion to amend the 10 Day Notice to the correct amount of outstanding rent.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 21 April 2016, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlords are entitled to a two-day order of possession.

The landlords have provided uncontested evidence that the tenant has unpaid rental arrears totaling \$1,745.00. I find that the landlords have proven their entitlement to the rent arrears. The landlords are entitled to a monetary order for the unpaid rent.

The landlords applied to keep the tenant's security deposit. I allow the landlords to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,407.50 under the following terms:

<b>Item</b>	<b>Amount</b>
Rent Arrears	\$1,745.00
Offset Security Deposit	-437.50
Recover Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$1,407.50</b>

The landlords are provided with this order in the above terms. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlords are provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 01, 2016

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Residential Tenancy Branch