



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER NATIVE HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FF MNDC MNR MNSD OPR

### Introduction

This hearing dealt with the landlord's 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 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 the filing fee for this application pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:14 am in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified that the tenant was served with the Application for Dispute Resolution hearing package with Notice of Hearing on May 6, 2016 by registered mail. The landlord provided the Canada Post tracking information with respect to this mailing. The landlord testified that the package was returned to her marked "unclaimed". Pursuant to section 89 and 90 of the *Act* as well as Policy Guideline No. 12 (partially reproduced below), I find that the tenant was sufficiently served with the landlord's Application for Dispute Resolution package.

I provide a portion of the Residential Tenancy Policy Guideline No. 12 that provides the explanation of *deemed service*.

Deemed service means that the document is presumed to have been served unless there is clear evidence to the contrary. Evidence contrary to these provisions could prove that the documents were received earlier. .

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

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 retain all or a portion of the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on December 1, 2013 with a rental amount of \$750.00 payable on the first of each month. The landlord submitted a copy of the residential tenancy agreement. The landlord testified that the tenant has rental arrears dating back to 2014. The landlord testified that a payment arrangement for outstanding rent was agreed to however the tenant has been unable to meet that agreement. The landlord sought a monetary order for the outstanding rental amount, to retain the tenant's security deposit and the filing fee for this application. The landlord testified that she continues to hold a \$516.00 paid by the tenant at the outset of the tenancy.

The landlord has applied for an Order of Possession for unpaid rent. The landlord testified that the tenant did not pay the full rental amount in December 2013. The landlord testified that, from December 2013, the tenant has accrued rental arrears by failing to pay the full rental amount over the course of 2014 and 2015. The tenant submitted a ledger to show that the tenant made partial contributions to the \$750.00 rental amount but has not paid the full amount and had not paid the rental arrears.

The landlord provided documentary evidence that the parties agreed to a payment plan. Initially, in December 2, 2015, the tenant signed a payment plan agreement to pay \$500.00 per month. The landlord testified that the tenant was unable to make any payment towards this plan for the outstanding rent. In April 2016, another payment plan agreement was signed wherein the tenant would pay \$200.00 per month. The landlord testified that the tenant was unable to make any payment towards this secondary plan as of the date of this hearing.

The landlord testified that, as of the date of her application, the tenant owed a total amount of \$1612.16. The accounting ledger for this unit submitted as evidence showed that, despite paying the current rental amount, the tenant has not paid the \$1612.16 that remains outstanding.

The landlord submitted a copy of the most recent 10 Day Notice to End Tenancy for Unpaid Rent issued to the tenant on April 22, 2016. The effective date provided by the

landlord on the 10 Day Notice was May 12, 2016. The landlord testified that the tenant did not pay the outstanding rent after receiving the 10 Day Notice. The landlord applied for a 2 Day Order of Possession.

The landlord is also seeking a monetary award of \$1612.16 in rental arrears as documented in their accounting ledger.

### Analysis

The tenant and landlord both made genuine attempts to create an arrangement to pay the rental arrears. However, as of the date of this hearing the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. The tenant did not attend this hearing although she was sent the landlord's Application for an Order of Possession. In accordance with section 46(5) of the *Act*, the tenant's failure to either pay the outstanding rental amount or to file in dispute of the Notice to End Tenancy within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 12, 2016. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order for the outstanding rent totalling \$1612.16. I accept this uncontested evidence offered by the landlord and the supporting documentary evidence submitted, including the accounting ledger. I am issuing the attached monetary order that includes the landlord's application for \$1612.16 in unpaid rent.

The landlord testified that she continues to hold a security deposit of \$516.00 plus any interest from December 2013 to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit *plus any interest* in partial satisfaction of the monetary award. There is no interest payable for this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears	\$1612.16
Less Security Deposit	-516.00
Recovery of Filing Fee for this application	100.00
<b>Total Monetary Award to Landlord</b>	<b>\$1196.16</b>

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 03, 2016

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Residential Tenancy Branch