



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNDC, FF

### 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 and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:44 p.m. in order to enable them to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenants' door at 2:30 p.m. on October 2, 2012. The landlord entered into written evidence a copy of a witnessed Proof of Service document attesting to the posting of the 10 Day Notice on the tenants' door at that time and date. The landlord testified that landlord representative FR handed a copy of the landlord's dispute resolution hearing package to Tenant Joey N. on October 19, 2012. Although I did not have a copy of the Proof of Service document, she testified that a Proof of Service document signed by the tenant who was handed the dispute resolution hearing package was submitted to the Residential Tenancy Branch.

I am satisfied that the landlord served the 10 Day Notice to the tenants and the application for an Order of Possession for unpaid rent in accordance with sections 88, 89(2) and 90 of the *Act*. I can consider the landlord's application for an Order of Possession for the rental unit. I am also satisfied that the dispute resolution hearing package was served to Tenant Joey N. in accordance with section 89(1) of the *Act*. The landlord testified that the other tenant has not lived at the premises for some time. There is no evidence that the other tenant has been served with a copy of the landlord's dispute resolution hearing package. For these reasons, I can only consider the landlord's application for a monetary Order against Tenant Joey N., the only tenant who was served a copy of the landlord's application for a monetary award pursuant to

section 89(1) of the *Act*. I dismiss the landlord's application for a monetary Order against the other tenant with leave to reapply.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary Order against Tenant Joey N. for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from Tenant Joey N?

#### Background and Evidence

This six-month fixed term tenancy commenced on January 1, 2010 at a monthly rent of \$825.00. At the expiration of the initial term, the tenancy converted to a periodic tenancy. Current monthly rent is set at \$840.00, payable in advance on the first of each month. The terms of the Residential Tenancy Agreement (the Agreement) between the parties and the Addendum attached to that Agreement calls for a \$20.00 monthly parking charge. The Agreement also calls for a \$20.00 late fee if rent is not paid by the first of each month. The landlord continues to hold a \$412.50 security deposit paid on December 29, 2009 and a \$200.00 pet damage deposit paid on December 31, 2009.

The landlord's application for a monetary award of \$2,640.00 included unpaid rent of \$840.00 for each of October, November and December 2012, parking fees of \$20.00 for each of these three months, and late fees of \$20.00 for each of these months.

At the hearing, the landlord testified that the tenant paid \$880.00 towards his outstanding arrears on October 27, 2012. She said that the tenant was issued a receipt for this payment for use and occupancy only, and not to continue this tenancy. She testified that no further payments have been made. She requested a revision of the requested monetary award from \$2,640.00 to \$880.00. The revised monetary award requested was for unpaid rent and parking, and a late fee for November 2012.

#### Analysis

I find that the landlord's acceptance of the \$880.00 payment on October 27, 2012 for use and occupancy only did not continue this tenancy. The tenants failed to pay the October 2012 rent in full within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of this tenancy on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by October 15, 2012. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal

Order of Possession which must be served on the tenant(s). 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.

Based on the landlord's undisputed evidence, I find that the landlord is entitled to a monetary award of \$840.00 for unpaid rent for November 2012, a \$20.00 late fee for November 2012, and an unpaid parking fee of \$20.00 for November 2012, the latter of which was specified in the Addendum to the Agreement. This monetary award is in the landlord's favour against Tenant Joey N.

Although the landlord's application does not seek to retain the security and pet damage deposits for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain these deposits in partial satisfaction of the monetary award issued in this decision. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application from Tenant Joey N.

### Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). 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.

I issue a monetary Order in the landlord's favour against Tenant Joey N. under the following terms, which allows the landlord to recover unpaid rent, parking, a late fee and the filing fee for this application, and to retain the security and pet damage deposits for this tenancy:

Item	Amount
Unpaid November 2012 Rent	\$840.00
November 2012 Late Fee	20.00
Unpaid November 2012 Parking	20.00
Less Security and Pet Damage Deposits (\$412.50 + \$200.00 = \$612.50)	-612.50
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$297.50</b>

The landlord is provided with these Orders in the above terms and Tenant Joey N. must be served with a copy of these Orders as soon as possible. Should Tenant Joey N. fail

to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for a monetary Order against Tenant Joseph N. (the other tenant in the landlord's application) is dismissed with leave to reapply.

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: November 23, 2012

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Residential Tenancy Branch

