



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, 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 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 from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:11 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. Landlord AD testified that she handed the tenant the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on December 2, 2012. The landlord's other representative at the hearing gave sworn testimony that she witnessed AD hand the 10 Day Notice to the tenant on that date. The landlord also entered into written evidence a signed statement from AD and the landlords' witness attesting to the service of the 10 Day Notice to the tenant. Landlord AD testified that a copy of the landlords' dispute resolution hearing package was handed to the tenant on December 19, 2012. She entered into written evidence a copy of the tenant's signature attesting to receipt of the hearing package by the tenant on December 19, 2012. I am satisfied that the landlords served the above documents to the tenant in accordance with the *Act*.

### Issues(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? Are the landlords entitled to retain all or a portion of the tenant's pet damage and security deposits 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

This tenancy commenced as a one-year fixed term tenancy on July 1, 2011. At the expiration of the initial term, the tenancy converted to a periodic tenancy. Monthly rent is set at \$725.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$362.50 pet damage deposit and \$362.50 security deposit, both paid on June 25, 2011.

The landlords' 10 Day Notice identified \$725.00 owing for December 2012 rent. The landlords' application for dispute resolution requested a monetary award of \$1,450.00 for unpaid rent for December 2012 and January 2013, plus late fees of \$25.00 for each month, plus recovery of the landlords' filing fee.

Landlord AD testified that the landlords accepted the following payments from the tenant for "use and occupancy only" since the 10 Day Notice was issued:

- December 21, 2012                 \$400.00
- January 9, 2013                   \$350.00
- January 22, 2013                 \$340.00

Based on the landlords' acceptance of the above payments from the tenant, Landlord AD requested a reduction in the amount of the monetary award requested by the landlords to \$460.00 (i.e., \$385.00 for unpaid rent; \$25.00 late fee for January 2013; and \$50.00 filing fee = \$460.00).

### Analysis

I find that the landlords' acceptance of payments from the tenant since the issuance of the 10 Day Notice for use and occupancy only has not continued this tenancy. The tenant failed to pay the December 2012 rent in full within five days of receiving the 10 Day Notice. The tenant has 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 tenant's failure to take either of these actions 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 the corrected effective date of this notice, December 31, 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. 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 find that the landlord has established entitlement to a monetary award of \$460.00 for unpaid rent, the January 2013 late fee, and recovery of the filing fee. I allow the

landlord to retain \$460.00 from the tenant's pet damage and security deposits in partial satisfaction of the monetary award issued in this decision.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlords' 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 order the landlords to retain all of the tenant's \$362.50 security deposit in order to partially satisfy the \$460.00 monetary award issued to the landlords for unpaid rent and losses arising out of this tenancy and recovery of the landlords' filing fee. I also order the landlords to retain a further \$97.50 from the tenant's pet damage deposit to complete the remainder of the monetary award issued to the landlords in this decision. The remaining value of the tenants' pet damage deposit is now \$265.00.

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: January 23, 2013

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Residential Tenancy Branch

