



# 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 was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on October 23, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service.

The tenant refused to claim the registered mail and it was returned to the landlord.

Refusal to claim registered mail does not allow a party to avoid service. Therefore, I find that these documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

### 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 October and November 2013 rent?

May the landlord retain the security deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The 1 year fixed term tenancy commenced on September 8, 2013; rent was \$800.00 per month, due on the 1<sup>st</sup> day of each month. A security deposit in the sum of \$400.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on October 4, 2013, between noon and 4 p.m. a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of October 14, 2013 was served by posting to the tenant's door. A proof of service document was supplied as evidence of service; the witness, K.R., signed, confirming service.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$800.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant has not paid rent since September, 2013 and will not respond to the landlord's telephone calls. The landlord has claimed compensation in the sum of \$1,600.00.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the 3rd day after it is posted. Therefore, I find that the tenant received the Notice to End Tenancy on October 7, 2013.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on October 7, 2013, I find that the earliest effective date of the Notice is October 17, 2013.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was October 17, 2013.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on October 17, 2013, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights, therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,600.00 for October and November 2013, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the sum of \$400.00 in partial satisfaction of the monetary claim.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,250.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent.

The landlord is entitled to filing fee costs.

The landlord may retain the security deposit.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 29, 2013

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Residential Tenancy Branch

