



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This is an application filed by the landlord for an order of possession and a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The landlord has submitted documentary evidence which the tenant has acknowledged receiving. The tenant did not submit any documentary evidence. As both parties have attended and have acknowledged receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?  
Is the landlord entitled to a monetary order?  
Is the landlord entitled to retain the security deposit?

### Background and Evidence

Both parties confirmed that there is a signed tenancy agreement and that the monthly rent is currently \$766.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$300.00 was paid. Neither party has submitted a copy of the signed tenancy agreement.

Both parties confirmed that the landlord served the tenant with a 10 day notice to end tenancy issued for unpaid rent dated March 4, 2014 by posting it to the rental unit door. The notice states that the tenant failed to pay rent of \$866.00 that was due on March 1, 2014 and that there is a displayed effective end of tenancy date of March 14, 2014. Both parties confirmed that the tenant issued a post dated cheque for March 20, 2014

for \$766.00. The landlord issued a receipt dated March 20, 2014 for use and occupancy only. The tenant argues that he paid the rent on March 5, 2014 with the post dated cheque for March 20, 2014 and considers the rent paid.

The landlord states that the tenant has failed to pay late rent fees totalling, \$150.00 which is \$25.00 for each month from November 2013 to April 2014 for 6 months. The tenant confirmed in his direct testimony that he pays the rent late because he is paid on the 5<sup>th</sup> and 20<sup>th</sup> of each month and that there was a verbal agreement with the landlord to do so. The landlord disputes this stating that there is no agreement to pay the rent late. The tenant states that he has never paid any late rent fees since he has lived at the rental unit for the last 13 years. The tenant also states that he paid the rent for May 2014 on May 2, 2014 by putting a cheque in the landlord's mailbox. The landlord disputes this stating that as of May 5, 2014 at 6pm there was no rent cheque from the tenant.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$766.00 for May 2014 and \$150.00 in late rent fees for a total of \$916.00.

### Analysis

I accept the evidence of both parties and find that the tenant was late paying the rent for March 1, 2014. The tenant issued a post dated cheque on March 5, 2014 for March 20, 2014 and failed to pay the rent within the allowed 5 day timeframe, nor did the tenant file an application for dispute resolution to dispute the notice. On this basis, I find that the tenant is conclusively presumed to have accepted that the tenancy was at an end. The landlord has established a claim for an order of possession. The landlord is granted an order of possession. This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary claim, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant in which the tenant has not paid the current monthly rent of \$766.00 for May 2014. The tenant has failed to provide sufficient evidence to satisfy me that a rent cheque was provided to the landlord as the landlord has disputed receiving any. The landlord has established a claim for \$766.00 for May 2014 rent.

On the claim of \$150.00 for 6 months of late rent fees, I find that the landlord has failed. The tenant has disputed that there was any late rent fees in his signed tenancy agreement as he has previously never paid any. The landlord states that there is a

provision in the signed tenancy agreement which provides for a \$25.00 late rent charge, but has failed to provide sufficient evidence of this allowed charge. As such, the landlords claim for \$150.00 in late rent fees is dismissed.

The landlord is also entitled to recovery of the \$50.00 filing fee. The landlord may retain \$300.00 from the security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$516.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted an order of possession and a monetary order for \$516.00. The landlord may retain the security deposit.

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: May 06, 2014

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Residential Tenancy Branch

