



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR, MNR, MNSD, MNDC, FF

### **Introduction:**

This hearing was convened in response an Application for Dispute Resolution filed by the Landlord.

On March 11, 2014 the Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for damage to the rental, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, to end the tenancy early, and to recover the fee for filing an Application for Dispute Resolution.

On March 14, 2014 the Landlord filed an amended Application for Dispute Resolution in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

At the hearing the female Agent for the Landlord clarified that the application for a monetary Order, in the amount of \$3,000.00, is for unpaid rent from February and March of 2014 and unpaid rent/lost revenue from April of 2014. She withdrew the application for an Order of Possession, as the rental unit has been vacated.

The female Agent for the Landlord stated that on March 11, 2014 she personally served the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence to the Tenant. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

### **Issue(s) to be Decided:**

Is the Landlord entitled to a monetary Order for unpaid rent, lost revenue, and/or changing the locks; and to keep all or part of the security deposit?

### **Background and Evidence:**

The female Agent for the Landlord stated that this tenancy began on August 18, 2013; that the Tenant was required to pay monthly rent of \$1,000.00 by the first day of each month; and that the Tenant paid a security deposit of \$500.00.

The female Agent for the Landlord stated that on March 05, 2014 she personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of March 15, 2014. A copy of this Notice was not submitted in evidence, although a Notice to End Tenancy that has an effective date of February 15, 2014 was submitted in evidence.

The female Agent for the Landlord stated that the rental unit was not vacated until April 07, 2014, at which time a condition inspection report was completed. She stated that when the condition inspection report was completed the Tenant gave the Landlord written permission to retain the \$500.00 security deposit in compensation for damage done to the rental unit.

The female Agent for the Landlord stated that the Tenant did not pay any rent for February, March, or April of 2014. She stated that the rental unit was advertised for rent on a popular website on April 10, 2014 and they have now located a tenant, effective June 01, 2014.

### Analysis

As the Landlord has written authorization to retain the security deposit in accordance with section 38(4)(a) of the *Act*, I find there is no reason to consider the Landlord's claim to retain the security deposit. As the written authorization to retain the security deposit was in compensation for damage to the rental unit, I find there is no reason to consider the Landlord's claim for compensation for changing the locks.

Based on the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,000.00 by the first day of each month and that the Tenant did not pay rent when it was due on February 01, 2014 or March 01, 2014. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,000.00 in outstanding rent to the Landlord for these months.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence, I find that the Tenant was personally served with a Notice to End Tenancy on March 05, 2014, which declared that he must vacate the rental unit on March 15, 2014.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. As I have no evidence that the Tenant exercised either of these rights, I find that the Tenant accepted that the tenancy ended on March 15, 2014, pursuant to section 46(5) of the *Act*.

As the Tenant did not vacate the rental unit by March 15, 2014, I find that he is obligated to pay rent, on a per diem basis, for the days he remained in possession of the rental unit. As he has already been ordered to pay rent for the period between March 15, 2014 and March 31, 2014, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the seven days in April that he remained in possession of the rental unit, at a daily rate of \$33.33, which equates to \$233.31.

I find that the Tenant fundamentally breached the tenancy agreement when he did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when he did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that his continued occupancy of the rental unit made it difficult, if not impossible for the Landlord to find new tenants for April 01, 2014. I therefore find that the Tenant must compensate the Landlord for the loss of revenue experienced between April 07, 2014 and April 30, 2014, which was \$766.69.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$3,050.00, which is comprised of \$3,000.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount of \$3,000.00 plus the filing fee. 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.

I note that the Landlord has been granted the full amount of the monetary claim for \$3,000.00 and that I would have been unable to grant compensation in a greater amount, even if the Landlord was pursuing additional compensation for damage to the rental unit.

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 01, 2014

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Residential Tenancy Branch

