



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Prompton Real Estate Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord participated in the teleconference hearing, but the tenant did not call into the hearing. The landlord submitted evidence that they served the tenant with the application for dispute resolution and notice of hearing by registered mail sent on May 28, 2014. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I found that the tenant was deemed served with notice of the hearing on May 2, 2014, and I proceeded with the hearing in the absence of the tenant.

### Issue(s) to be Decided

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

### Background and Evidence

The tenancy began on June 1, 2013. The rental unit is a condo in a strata building. Rent in the amount of \$1150 was payable in advance on the first day of each month. The rent increased to \$1175 on June 1, 2014. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$575. The tenant failed to pay rent in the month of April 2014 and on May 7, 2014 the landlord served the tenant with a notice to end tenancy for non-payment of rent by posting the notice on the rental unit door. The tenant further failed to pay rent in the months of May, June and July 2014.

The landlord has claimed unpaid rent and lost revenue for April and May 2014, in the amount of \$2300, and lost revenue for June and July 2014 in the amount of \$2350. The landlord has also claimed two NSF fees of \$65 each for two NSF cheques in April and May 2014. The landlord described these fees as a “deterrent.” The landlord submitted a copy of the tenancy agreement, which indicates that the rent was \$1150; the landlord could charge a fee of \$25 each for late payment of rent and NSF cheques; all NSF cheques are subject to a minimum service charge of \$40; and the tenant paid a security deposit of \$575. The landlord also submitted a copy of the notice of rent increase from \$1150 to \$1175 effective June 1, 2014.

The landlord also claimed \$400 for two by-law fines issued to the landlord for excessive noise caused by the tenant. The tenancy agreement indicates that the tenant signed a Form K and was given a copy of the strata rules. The landlord submitted copies of the two infraction letters issued by the strata, which indicated that the fines were the result of noise infractions by the tenant after two warnings had been issued.

Finally, the landlord claimed \$182.50 for repair of the washing machine. The landlord submitted an invoice in which the repair technician indicated, “removed foreign objects from drain pump + Tub assy (sock + bra wire) jammed inside – re-installed dryer + checked/tested all ok now.” The landlord also submitted a copy of a letter they sent to the tenant, in which they wrote, “the technician reported that the issue with your shower’s diverter was from excessive force when operating the shower. As this is not a repair issue, but rather a usage issue, it will be your responsibility to pay for this invoice.”

### Analysis

I have reviewed all evidence and I accept that the tenant was served with the notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on May 10, 2014.

I accept the evidence before me that the tenant has failed to pay the rent owed within the five days granted under section 46(4) of the Act. I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the notice, May 20, 2014. The landlord is therefore entitled to an order of possession.

As for the monetary order, based on the above-noted evidence I find that the landlord has established a claim for \$4650 in unpaid rent and lost revenue for April through July 2014.

I find that the landlord is not entitled to \$65 each for two NSF cheques. The Act and regulation only allow for a maximum NSF fee of \$25. The tenancy agreement contains two contradictory terms regarding NSF fees, and one term is contrary to the Act. I therefore find that both terms regarding NSF fees are void, and the landlord may not collect any fees for NSF cheques. The Act and regulation do not allow for a “deterrent” fee.

I find that the landlord is entitled to \$400 claimed for the two by-law fines. The tenant signed the Form K and was required to abide by the strata by-laws, and the strata gave warnings before issuing the fines when the tenant contravened the by-laws regarding excessive noise.

I find that the landlord is not entitled to the amount claimed for repair to the washing machine. The technician’s report does not indicate that the damage was caused by “user error,” and the landlord’s letter appears to address repairs to a shower rather than a washing machine. I further find that normal use of a washing machine may likely lead to small items such as a sock or a bra wire becoming jammed in the washer; and part of the technician’s invoice includes work done on the dryer rather than the washer.

As the landlord’s application was mostly successful, I find they are also entitled to recovery of the \$50 filing fee for the cost of their application.

### Conclusion

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. 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.

The landlord is entitled to \$5100. I order that the landlord retain the security deposit of \$575 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$4525. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 16, 2014

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Residential Tenancy Branch

