



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MND, 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 and loss or damages 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 this 1:30 p.m. hearing continued until 2:05 p.m. The landlord and her agent attended the hearing and they were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord who attended this hearing ("the landlord") provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") was served to the tenant on October 27, 2014 by attaching a copy of the notice to the tenant's door. Pursuant to section 88 and 90 of the *Act*, I find the tenant deemed served on October 30, 2014, 3 days after the posting of the 10 Day Notice. The landlord gave sworn testimony that she served the tenant with the Application for Dispute Resolution hearing package by registered mail to the rental unit on November 6, 2014. The landlord provided a receipt and tracking number as well as a copy of the envelope from Canada Post indicating, "unclaimed". I accept that the tenant was deemed served with the 10 Day Notice and the Application for Dispute Resolution hearing package on November 11, 2014, the fifth day after the registered mailing.

### Issues 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 and losses arising out of this tenancy?

Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord testified this one year fixed term tenancy began on June 1, 2014. The rental amount of \$1230.00 was payable on the first of each month. The landlords continue to hold a security deposit in the amount of \$615.00 paid by the tenant on June 1, 2014.

The landlords have applied for an Order of Possession for unpaid rent for the month of October 2014. The landlord testified that the tenant did not pay rent of \$1230.00 due on October 1, 2014. The landlord testified that November and December rent are unpaid. The landlord testified that the tenant has paid rent late in the past on more than one occasion.

The landlord testified that the tenant's rent cheque was returned from the bank in August 2014. The landlord testified that again in October 2014, the tenant's rent cheque was returned. The landlord testified of the efforts made to contact the tenant.

The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the October 2014 rent after receiving the 10 Day Notice on October 30, 2014. After the expiration of that 10 Day period, and five more days, the landlord applied for an Order of Possession.

The landlords are also seeking a monetary award of \$2460.00 for the months of October and November. The landlord testified that the tenant has not paid December rent and that the tenant remains in the rental unit as of the date of this hearing.

The landlord testified that she has made numerous attempts to contact the tenant by phone, by text and by attending to the rental unit. The tenant has not responded to any of these methods of contact. The landlord testified that, on at least two occasions, the tenant has contacted and arranged to meet to pay the outstanding rental amounts. On both occasions, October 18, 2014 and October 24, 2014, the tenant met the landlord and told them she would not pay her rent.

The landlord submitted a bill into evidence that she received from the property management company at the residential premises for \$200.00. This \$200.00 bill is as a fine for a by-law infraction as a result of the tenant causing damage and nuisance on the property. The landlord provided a letter from the property management company explaining the circumstances of this fine, involving damage to the elevator by the tenant requiring clean-up.

### Analysis

The tenant failed to pay the October rent within five days of receiving the 10 Day Notice to End Tenancy. 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. The tenant remains in the rental unit and has not paid October, November or December rent. I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant.

I find that the landlord is entitled to receive an order for unpaid rent in October, November and December 2014. The landlord testified that she has returned the post-dated November rent cheque provided by the tenant because she does not wish to incur further fees for returned cheques. Based on the evidence that the tenant remains in the rental unit as of the date of this hearing and has not paid December rent, I find the landlord is also entitled to rent for December. I am issuing the attached monetary order that includes the landlord's original application for \$2460.00 in unpaid rent for October and November 2014 and an additional \$1230.00 in unpaid rent for December.

The landlord also applied for \$200.00 as a result of a by-law fine issued as a direct result of the tenant's actions. Based on the landlord's documentary evidence and testimony, I find that the landlord is entitled to \$200.00 for a by-law infraction of the tenant on the premises.

The landlord testified that he continues to hold a security deposit of \$615.00 from June 1, 2014. I allow the landlords to retain the security deposit plus any interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I am granting the landlords an Order of Possession to be effective two days after notice is served to 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 issue a monetary Order in favour of the landlords as follows:

Rental Arrears for October 2014	\$1230.00
Rental Arrears for November 2014	1230.00
Rental Arrears for December 2014	1230.00
By-Law Fine by property mgmt. company	200.00
Less Security Deposit	-615.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$3325.00</b>

The landlords are provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: December 22, 2014

---

Residential Tenancy Branch

