



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's 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 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

The landlord's representative ("the landlord") testified that the 10 Day Notice to End Tenancy for Unpaid Rent was served to the tenant by posting the notice on her rental unit door on January 7, 2015. The tenant confirmed receipt of this notice. Pursuant to section 88 and 90 of the *Act*, I find the tenant deemed served with the notice on January 10, 2015, 3 days after its posting. The landlord testified that the tenant was served with the landlord's dispute resolution hearing package by registered mail on January 23, 2015. The tenant confirmed receipt of the package and Notice for Hearing. The landlord provided a receipt and tracking number for the package. Based on the sworn testimony of the parties, and pursuant to section 89 and 90 of the *Act*, I find that the tenant has been deemed served with the landlord's dispute resolution hearing package.

### Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord gave evidence that this one year fixed term tenancy for the premises began on May 1, 2014 and was scheduled to continue on a month to month basis after April 30, 2015. The rental amount for this apartment unit was established at \$1680.00. The landlord testified that he continued to hold the \$840.00 security deposit that the tenant paid on April 22, 2014.

The landlord has applied for an Order of Possession for unpaid rent for the month of January. The landlord testified that the tenant did not pay rent of \$1680.00 due on January 1, 2015. The landlord and tenant both testified that the tenant paid January rent on January 30, 2015. Receipts provided by the landlord indicate that the tenant has often paid rent one to two weeks late over the past several months.

The landlord testified that in November 2014, December 2014 and January 2015, he issued 10 Day Notices for unpaid rent when the tenant did not pay her rent on the first of each month. He testified that he has to "chase her" to get the money but she eventually comes and pays rent. Beyond the issuance of a 10 Day Notice, there is evidence that the landlord indicated to the tenant that he wished to end the tenancy. The landlord provided documentary evidence of warning letters to the tenant. The last of those letters, dated January 20, 2015, stated, "Failure to clear the balance will result in further legal action and filing through a third party collections agency and/or pursuing eviction proceedings." As well as those letters, copies of receipts provided over the last several months indicate, "for use and occupancy only".

The tenant testified that she needed more time to move and that she had paid her January rent. She testified that she has been ill and has not been able to work full time. She also testified that she is a single mother. She acknowledged that it is "probably best" if this tenancy comes to an end soon as she cannot manage to pay the full amount on time but she had hoped that her tenancy would be reinstated until the end of the fixed term. She confirmed the testimony of the landlord that she had not yet paid February rent as of the date of this hearing.

As well as an Order of Possession, the landlord is also seeking a monetary award of \$1730.00 for the month of February 2015 and \$50.00 in late and nsf charges for February 2014. The landlord provided a copy of the tenancy agreement that provides notice to the tenant that late fees will apply to the tenancy.

### Analysis

If a landlord who has given a tenant notice to end tenancy, that landlord must communicate their intentions to end that tenancy clearly. This is of particular importance with respect to any payments made by the tenant after a notice to end tenancy is issued. The Residential Tenancy Branch materials suggest that a landlord place the words, "use and occupancy only" on a receipt issued for funds accepted from the tenant after the issuance of a notice to end tenancy. The landlord has taken those steps in this case.

The tenant failed to pay the January 2015 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 her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 20, 2015. As that has not occurred, I find that the landlord is entitled to an Order of Possession for February 28, 2015, as requested by the landlord.

Based on the evidence provided by both parties, I find that the landlord is entitled to receive an order for unpaid rent in February 2015. I am issuing the attached monetary order that includes the landlord's application for \$1680.00 in unpaid rent for February 2015.

The landlord also applied for a \$25.00 fee for late payment of rent for January and February 2015. He provided copies of the written tenancy agreement which established this late payment fee. I find that the landlord is entitled to a \$25.00 late fee for the months of January and February 2015 totalling \$50.00.

The landlord testified that he continues to hold a security deposit of \$840.00 plus interest from May 1, 2014 to the date of this decision for this tenancy. There is no interest payable over this period. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As the landlord was 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 February 28, 2015 and after notice is served to the tenant. If the tenant does not vacate the rental unit by the date 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 February 2015	\$1680.00
Late Payment Fee for January 2015	25.00
Late Payment Fee for February 2015	25.00
Less Security Deposit and No Interest	-840.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$940.00</b>

The landlord is provided with formal Orders in the above terms. Should the tenant(s) 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: February 19, 2015

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Residential Tenancy Branch

