



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BABIC ENTERPRISES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### 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; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I waited until 0948 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent is a shareholder of the corporate landlord.

The agent testified that the landlord served the tenant with the dispute resolution package on 21 February 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 8 January 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with 10 Day Notice pursuant to sections 88 and 90 of the Act.

Issue(s) 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?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

On 1 July 2014, the tenant and landlord signed a tenancy agreement. On 1 August 2014, the tenant began occupying the rental unit. Monthly rent of \$900.00 is due on the first. The agent testified that the landlord continues to hold the tenant's security deposit in the amount of \$475.00, which was collected on 1 July 2014.

On 5 January 2015, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice set out an effective date of 16 January 2015. The 10 Day Notice set out that the tenant failed to pay \$950.00 in rent that was due on 1 January 2015. The agent testified that this was incorrect and that the tenant's rent arrears was actually \$900.00. The agent asked that I amend the 10 Day Notice.

The agent testified that the landlord has not received any payments from the tenant since the landlord issued the 10 Day Notice. The agent did not make a request to amend the landlord's application to include rent arrears for February and March. The agent testified that the landlord has not received any receipts for emergency repairs from the tenant. The agent testified that there are no outstanding orders of this Branch in respect of this tenancy.

Analysis

The agent asked to amend the 10 Day Notice to reduce the amount owing from \$950.00 to \$900.00 as this was the true amount of rent owing for January 2015. Subsection 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act. In this case, the landlord mistakenly included the old rent amount on the 10 Day Notice. This mistake does not go to the substance of the 10 Day Notice: there was rent outstanding at the time the notice was issued. The tenant ought to have known that the 10 Day Notice was issued for January's rent in the amount of \$900.00. For these reasons, I am exercising my discretion to amend the 10 Day Notice to the tenant's correct rent arrears.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by 23 January 2015, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The agent has provided sworn and uncontested testimony that the tenant has failed to pay January's rent arrears. I find that the landlord has proven its entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid January rent.

The agent testified that the landlord continued to hold the tenant's \$475.00 security deposit, plus interest, paid on 1 July 2014. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$425.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid January Rent	\$900.00
Offset Security Deposit	-475.00
<b>Total Monetary Order</b>	<b>\$425.00</b>

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 06, 2015

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Residential Tenancy Branch

