



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on June 01, 2015, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord who provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail on June 04, 2015. Canada Post tracking information was provided in the Landlord's testimony. The tracking information confirmed that the Tenant signed receipt of the registered mail on June 8, 2015.

Based on the above, I find the Tenant was provided sufficient notice of this hearing, in accordance with section 89 of the Act. Therefore, I proceeded in absence of the Tenant.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence that the Tenant entered into a fixed term tenancy agreement that began on May 1, 1995. At the beginning of the tenancy rent of \$1,450.00 was due on or before the first of each month. The Tenant paid a security deposit of \$775.00. The rent was subsequently increased with the most recent increase raising the rent to \$1,725.00 effective March 1, 2014.

The Landlord testified that when the Tenant failed to pay their May 1, 2015, rent the Landlord personally served the Tenant's wife with a 10 Day Notice to end tenancy. The Landlord stated that he checked on the rental unit last evening and it appears that the

Tenant is still occupying the unit. The Landlord asserted that the Tenant has not made a payment towards rent and now owes for May, June, and July 2015.

The Landlord stated that he is seeking an order of possession for as soon as possible and a Monetary Order for all the unpaid rent.

### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

Section 88(e) of the Act stipulates that a landlord may serve a tenant with a document required to be served by the Act by leaving a copy at the person's residence with an adult who apparently resides with the person.

In this case the Tenant's wife was personally served with the 10 Day Notice on May 14 2015, in accordance with section 88(e) of the Act. Therefore, the effective date of the Notice was **May 24, 2015**.

The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **May 24, 2015**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$1,725.00 that was due May 1, 2015, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord unpaid rent for May 1, 2015, in the amount of **\$1,725.00**.

As noted above this tenancy ended **May 24, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and loss of rent for June and July 2015. The Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire months of June and July 2015, in the amount of **\$3,450.00** (2 x \$1,725.00).

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent May 2015	\$1,725.00
Use & Occupancy & Loss of Rent June & July 2015	3,450.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$5,255.00</b>
<b>LESS:</b> Security Deposit \$775.00 + Interest \$149.75	<u>-924.75</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$4,330.25</u></b>

### Conclusion

The Landlord has been successful with his application and has been granted an Order of Possession and a Monetary Order for **\$4,330.25**.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$4,330.25**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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 21, 2015

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Residential Tenancy Branch

