



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR; MNR; MNDC, MNSD; FF

### **Introduction**

This is the Landlord's Application for Dispute Resolution seeking an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that the Notice of Hearing documents and copies of her documentary evidence were mailed to the Tenant, via registered mail, to the rental unit on October 23, 2015. The Landlord provided a copy of the registered mail receipt and the tracking number for the registered documents. She stated that the documents were returned to her "refused". The Landlord also provided a copy of the envelope which was returned, and which includes the post office stamp confirming that the Tenant refused to accept service.

Based on the Landlord's affirmed testimony and documentary evidence, I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being duly served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

The Landlord testified that she has a new address for service, which she provided to me. The Landlord's Application was amended to reflect her new address, and the electronic filing system was updated.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

### **Background and Evidence**

This tenancy began on April 2, 2015. Monthly rent is \$750.00 per month, due the first day of each month. The Tenant paid a security deposit in the amount of \$375.00 at the beginning of the tenancy.

The Landlord gave the following testimony:

The Tenant has been consistently late paying her rent throughout the tenancy. On October 2, 2015, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, by registered mail sent October 2, 2015. The Landlord provided a Proof of Service document and a copy of the registered mail receipt in evidence. The Notice was for \$1,500.00 in unpaid rent for the months of September and October, 2015.

The Landlord testified that the Tenant paid \$1,500.00 directly into the Landlord's bank account on November 2, 2015. The Landlord stated that she did not know about the deposit until she received her bank statement. She stated that the Tenant also deposited \$450.00 towards December's rent on December 1, 2015, and the balance on December 5, 2015. The Landlord testified that the parties had not had any discussion about reinstating the tenancy and that the Tenant would not receive or return phone calls from the Landlord.

**Analysis**

I accept that the Landlord served the Tenant with the Notice to End Tenancy by registered mail sent October 2, 2015. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected five days after mailing the documents. I find that the Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on October 17, 2015.

I find that the Landlord has not reinstated the tenancy. I find that the Landlord did not agree to reinstate the tenancy and that the Tenant could not reasonably believe that by making direct deposits into the Landlord's bank account that the tenancy was reinstated. I find that there was no agreement between the parties that the tenancy would continue.

The Tenant has paid for use and occupancy of the rental unit until December 31, 2015, and therefore I find that the Landlord is entitled to an Order of Possession effective 1:00 p.m., December 31, 2015.

The Landlord's request for a monetary award for unpaid rent and loss of revenue is dismissed.

The Landlord has been successful in her Application and I find that she is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

Pursuant to Section 72(2)(b) of the Act, the Landlord may deduct the \$50.00 filing fee from the security deposit. The remainder of the security deposit, \$325.00, must be applied in accordance with the provisions of the Act.

### **Conclusion**

The Landlord's request for a monetary award for unpaid rent and loss of revenue is **dismissed**.

The Landlord may deduct the cost of the **\$50.00** filing fee from the security deposit. **The remainder of the security deposit must be applied in accordance with the provisions of the Act.**

I hereby grant the Landlord an Order of Possession effective **1:00 p.m., December 31, 2015**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia 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: December 17, 2015

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Residential Tenancy Branch

