



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent and late fees; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on August 01, 2010 and that the Tenant is required to pay monthly rent of \$810.00 on the first day of each month.

The Agent for the Landlord and the Tenant agree that the Tenant did not pay rent when it was due on October 01, 2010. The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of October 12, 2010, was posted on the door of the rental unit on October 02, 2010. The Notice declared that the Tenant owed \$830.00 in rent that was due on October 01, 2010, which

the Agent for the Landlord declared included a \$20.00 late fee. The Tenant acknowledged locating the Notice to End Tenancy.

The Agent for the Landlord and the Tenant agree that the Tenant paid \$400.00 on October 08, 2010. The Agent for the Landlord stated that when this payment was made she advised the Tenant that his tenancy would end unless he paid all the outstanding debts prior to a dispute resolution hearing. The Tenant does not recall being advised of a hearing when he made this payment, although he understood he needed to pay all his rent.

The Agent for the Landlord and the Tenant agree that the Tenant paid \$430.00 on October 22, 2010, which satisfied all of his debts up to that point. Neither the Agent for the Landlord nor the Tenant recalls whether they had any discussions regarding the Notice to End Tenancy when this payment was made.

The Agent for the Landlord and the Tenant agree that the Tenant did not pay rent when it was due on November 01, 2010. The Agent for the Landlord and the Tenant agree that the Tenant paid \$200.00 on November 09, 2010. The Agent for the Landlord and the Tenant agree that the Tenant was advised that his tenancy would end unless he paid all the outstanding debts prior to the upcoming dispute resolution hearing.

The Agent for the Landlord and the Tenant agree that the Tenant paid \$660.00 on November 17, 2010, which leaves a credit of \$30.00.

### Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$810.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

I find that the Tenant had not paid the rent that was due on October 01, 2010 and that a Ten Day Notice to End Tenancy was posted on the door of the rental unit on October 02, 2010.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on October 05, 2010.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on October 05, 2010, I find that the earliest effective date of the Notice is October 15, 2010.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the

earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was October 15, 2010.

I find that the Tenant paid a portion of the outstanding rent on October 08, 2010, at which time he was advised that his tenancy would continue if he paid all of the outstanding debts prior to a dispute resolution hearing. I find that the Tenant paid all of his outstanding debts on October 21, 2010. As the Agent for the Landlord advised the Tenant that his tenancy would continue if the Tenant paid all of his outstanding debts prior to this hearing and the Tenant did pay all of his outstanding debts prior to this hearing, I find that the payment on October 21, 2010 reinstated the tenancy.

As the payment on October 21, 2010 reinstated the tenancy, I find that the Notice to End Tenancy was withdrawn or abandoned on that date. As the Notice to End Tenancy was withdrawn or abandoned, I dismiss the Landlord's application for an Order of Possession and I find that this tenancy shall continue until it is ended in accordance with the *Act*.

### Conclusion

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The Tenant agreed to allow the Landlord to apply the \$30.00 credit in his account to partially pay the cost of the filing this Application, which was \$50.00.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$20.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: November 17, 2010.

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Dispute Resolution Officer