



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

**OPR, MNR, 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 and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on November 25, 2010, at 4:30 p.m. copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the tenant at the rental unit address.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

### Issue(s) to be Decided

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

Is the landlord entitled to a monetary Order?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced September 1, 2010, rent is \$620.00 per month, due on the first day of each month. A deposit in the sum of \$300.00 was paid on August 27, 2010.

The landlord stated that on November 9, 2010, at 11 a.m. a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of November 19, 2010, was personally served to the tenant at his residence. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$640.00 within five days after the tenant is assumed to have received the Notice. The Notice also indicated

that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant has not paid November rent and as recently as November 25, 2010, he remained in the rental unit. The landlord has not established a date the tenant may have moved out or if any damages have occurred. No December rent was paid.

### Analysis

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 November 9, 2010, I find that the earliest effective date of the Notice is November 19, 2010.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on November 19, 2010, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights, therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

In the absence of evidence to the contrary and the tenant who was served notice of this hearing, I find that the tenant has not paid rent in the amount of \$620.00 for November and December each and that the landlord is entitled to compensation for unpaid rent for those months, The tenant has failed to vacate the rental unit by the effective date of the notice, thus denying the landlord an opportunity to take possession and locate new occupants for December 1, 2010.

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.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's security deposit in the amount of \$300.00, in partial satisfaction of the monetary claim.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$1,290.00, which is comprised of \$1,240.00 in unpaid November and December, 2010, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$300.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$940.00. 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

Dated: December 15, 2010.

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Dispute Resolution Officer