



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; authority to retain the security deposit; and, recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that the tenant was notified of this hearing by registered mail sent to the rental unit. The landlord provided a registered mail receipt and tracking number as proof of service. Having been satisfied the tenant was sufficiently served with notice of this hearing I proceeded to hear from the landlord without the tenant present.

At the commencement of the hearing the landlord testified the tenant has paid the outstanding rent and the landlord is only seeking an Order of Possession.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The landlord provided the following testimony. The tenancy commenced approximately 10 years ago under a verbal tenancy agreement. A \$250.00 security deposit was paid by the tenant. The tenant is currently required to pay rent of \$620.00 including utilities on the 1<sup>st</sup> day of every month. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door on January 3, 2011. The Notice indicates \$600.00 in rent and \$20.00 in utilities was outstanding January 1, 2011.

The landlord made this application on January 13, 2011 and the landlord submitted that after making the application the tenant slid a cheque for the outstanding rent under the landlord's door on January 13, 2011. Upon enquiry, the landlord stated that the landlord and tenant did not have discussions about continuing the tenancy as the parties are no longer speaking after the tenant assaulted him.

The landlord stated that he would like an Order of Possession effective March 1, 2011. Provided as documentary evidence for this hearing was a copy of the 10 Day Notice and registered mail receipt.

### Analysis

Under section 46 of the Act, a tenant who receives a 10 Day Notice has five days after receiving the Notice to pay the outstanding rent in order to nullify the Notice and continue the tenancy. If a tenant does not pay the rent or dispute the Notice within five days, the tenant is conclusively presumed to have accepted that the tenancy will end 10 days after receiving the Notice and must vacate the rental unit.

In the absence of evidence to the contrary, I accept that the tenant was served with the 10 Day Notice as submitted by the landlord. Since the Notice was posted on the tenant's door it is deemed to be received by the tenant three days later in accordance with section 90 of the Act. Accordingly, the tenant had until January 11, 2011 to pay the outstanding rent or dispute the Notice. Paying the rent on January 13, 2011 does not nullify the Notice and the tenancy ended on January 16, 2011.

Having heard the tenant is still residing in the rental unit and having found that the tenancy has ended, I provide the landlord with an Order of Possession. As requested by the landlord the Order of Possession is effective March 1, 2011. The Order of Possession must be served upon the tenant and may be enforced in The Supreme Court of British Columbia.

I award the filing fee to the landlord. The landlord is authorized to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

### Conclusion

The tenancy has ended for unpaid rent and the landlord is provided an Order of Possession effective March 1, 2011. The landlord is also authorized to recover the filing fee paid for this application by deducting \$50.00 from the tenant's security deposit.

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: January 27, 2011.

---

Residential Tenancy Branch