



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes**      OPR, MNR, MNSD, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

The parties both appeared, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence.

The landlord provided evidence packages in advance of the hearing, however one of those packages was not received 5 days in advance of the hearing and the tenant objected to the admissibility of that evidence. Therefore, the latest evidence package provided by the landlord is not considered in this Decision. All other evidence and testimony provided has been reviewed and is considered in this Decision.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?  
Is the landlord entitled to a monetary order for unpaid rent or utilities?  
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

This tenancy began as a fixed term tenancy commencing September 1, 2010 and expired on December 1, 2010, although the tenant actually moved in on August 27, 2010. The tenant began to pay rent on September 1, 2010, and upon the expiry of the fixed term, the tenancy reverted to a month-to-month tenancy. Rent in the amount of \$700.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the tenant paid a security deposit in the amount of \$350.00.

The landlord testified that the tenant failed to pay rent for the month of October, 2010 on time, but paid it in instalments in November. The last of those payments was on November 26, 2010 which also included \$200.00 for November's rent. The balance of

November's rent was also paid in the month of November plus \$200.00 for the month of December.

The tenant did not pay the balance of December's rent on time, and on December 2, 2010 the landlord posted to the door of the rental unit a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of that notice was provided in advance of the hearing, however only 1 page was provided. When questioned, the landlord testified that 2 pages were in fact served upon the tenant. The notice to end the tenancy states that the tenant failed to pay rent in the amount of \$700.00 that was due on December 1, 2010, the form is dated December 2, 2010, and contains an expected date of vacancy of December 10, 2010. On December 15, 2010 the tenant paid the landlord the balance due of \$500.00 and the landlord issued a receipt which stated "For Use and Occupancy Only." Rent for the month of January, 2011 has not yet been paid.

The tenant testified that he would be able to pay the outstanding rent by January 21, 2011, however the landlord stated that she is concerned about damage to the unit and smoking, which is prohibited in the rental unit, and requests an Order of Possession.

The tenant has not filed for dispute resolution to dispute the notice to end the tenancy.

## **Analysis**

Based on the undisputed testimony of the landlord, I find that the tenant was served with a notice to end tenancy for non-payment of rent. I further find that the notice contains an error in the dates, in that the tenant was deemed to have been served 3 days after posting the notice, which would be on December 5, 2010. The effective date of the notice would then be on December 15, 2010. Pursuant to Section 53 of the *Act*, the effective date of the notice is deemed to be changed to comply with the earliest date that does comply.

The tenant did not pay the outstanding rent within the 5 days provided for in Section 46 of the *Residential Tenancy Act* and has not applied for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

As for the monetary order, I find that the landlord has established a claim for \$1,200.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee.



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## **Conclusion**

For the reasons set out above, I hereby grant an Order of Possession in favor of the landlord. The tenant must be served with the Order of Possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I further order that the landlord retain the security deposit and interest of \$350.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$900.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: January 07, 2011.

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Residential Tenancy Branch