



# 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 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, 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.

The Agent for the Landlord #1 stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the service address noted on the Application, on December 17, 2010. Canada Post documentation was submitted that corroborates this statement. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

### 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; 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 #1 stated that this tenancy began on September 15, 2009; that the Tenant is currently required to pay monthly rent of \$846.24 on the first day of each month; and that the Tenant paid a security deposit of \$410.00.

The Agent for the Landlord #2 stated that she put a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of December 13, 2010 on the door of the rental unit on December 03, 2010. The Notice declared that the Tenant owed \$897.48 in rent that was due on December 01, 2010.

The Agent for the Landlord #1 stated that on December 01, 2010 the Tenant still owed \$26.24 in rent from October of 2010. She stated that the Tenant's December rent

payment of \$846.24 was not honoured by her financial institution, for which she was charged a fee of \$25.00. The Agent for the Landlord #1 stated that the Tenant made a payment of \$500.00 on December 15, 2010, \$25.00 of which was applied to the NSF fee, leaving rental arrears of \$397.48.

The Agent for the Landlord #1 stated that the Tenant's January rent payment of \$846.24 was not honoured by her financial institution, for which she was charged a fee of \$25.00. The Agent for the Landlord #1 stated that the Tenant made a payment of \$1,115.00 today, \$25.00 of which was applied to the NSF fee, leaving rental arrears of \$53.72.

The Agent for the Landlord #1 stated that the Tenant left the \$1,115.00 payment was left in the Landlord's mail box today and the parties have not discussed whether or not the tenancy would continue on the basis of that payment.

## Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that currently requires the Tenant to pay monthly rent of \$846.24 on the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant had not paid all of the rent that was due on December 03, 2010. If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy was posted at the rental unit on December 03, 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 December 06, 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 December 06, 2010, I find that the earliest effective date of the Notice was December 16, 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 December 16, 2010.

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 and, 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.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant had not paid all of the rent was due on December 01, 2010 until today. I find that the Tenant still owes rent of \$153.72 for January of 2011. As she is required to pay rent pursuant to section 26(1) of the Act, I find that the Tenant must pay \$153.72 in outstanding rent to the Landlord.

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.

## Conclusion

I hereby grant the Landlord an Order of Possession that is effective 1:00 p.m. on January 31, 2011. 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 \$203.72, which is comprised of \$153.72 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I hereby authorize the Landlord to retain \$203.72 from the security deposit paid by the Tenant, in full satisfaction of this monetary claim.

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 12, 2011.

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Residential Tenancy Branch