



# 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 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 21, 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 stated that this tenancy began on June 14, 2010; that the Tenant is required to pay monthly rent of \$870.00 on the first day of each month; and that the Tenant paid a security deposit of \$435.00.

The Agent for the Landlord stated that the Tenant did not pay any rent for November of 2010 until December 15, 2010, for which she received a receipt indicating the rent was being accepted for use and occupancy only. The Agent for the Landlord stated that the Tenant did not pay any rent for December of 2010 until December 21, 2010, for which she received a receipt indicating the rent was being accepted for use and occupancy

only. The Agent for the Landlord stated that the Tenant did not pay any rent for January of 2011.

The Agent for the Landlord stated that he observed another agent for the Landlord post a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of November 13, 2010, on the door of the rental unit on November 02, 2010. The Notice declared that the Tenant owed \$870.00 in rent that was due on November 01, 2010.

### 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 requires the Tenant to pay monthly rent of \$870.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord when it is due.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid rent of \$870.00 that was due on January 01, 2011. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$870.00 in rent for January of 2011.

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. In the absence of evidence to the contrary, I find that the Tenant did not pay rent when it was due on November 01, 2010 and that a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on November 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 November 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 November 05, 2010, I find that the earliest effective date of the Notice was November 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 November 15, 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 ended. On

this basis I will grant the landlord an Order of Possession that is effective on January 31, 2011.

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 at 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 \$920.00, which is comprised of \$870 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(1) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$435.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$485.00. 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: January 14, 2011.

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Residential Tenancy Branch