



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and to recover the filing fees associated with this application.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of Dispute Resolution to the tenant by way of registered mail sent on December 23<sup>rd</sup>, 2010. The tenant did not participate and the hearing proceeded in the tenant's absence.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and for what amount?

### Background and Evidence

The rental unit consists of a one bedroom condominium in a multi unit complex located in Vancouver. Pursuant to a verbal agreement, the month to month based tenancy started in the summer of 2007 at a rate of \$1200.00 payable on the first of each month. The tenant did not pay a security deposit.

The landlord testified that he believes the tenant may be staying elsewhere with a friend.

The landlord said that the tenant does not have a phone and makes himself difficult to reach. The landlord said that he was able to talk to him on Sunday, January 9<sup>th</sup> 2011 to advise him of the upcoming hearing, and to remind him of the unpaid rent. The landlord stated that the tenant appeared unresponsive to his comments; the tenant said that he was going through job and emotional problems, and that he would leave by the end of January.

On December 10<sup>th</sup>, 2010, the landlord served the tenant with a 10 Day Notice to End Tenancy effective December 15<sup>th</sup>, 2010. I note that the effective date for that notice was earlier than 10 days. Section 53(2) of the *Residential Tenancy Act* provides in part that if the effective date on the notice is earlier than the earliest date permitted, the effective date is deemed to be the earliest date that complies with the section. In this matter, the earliest date should have been December 20<sup>th</sup>, 2010.

The landlord submitted a claim for unpaid rent for December 2010, and January 2011 for the sum of \$2400.00.

### Analysis

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution.

I accept the landlord's testimony that he served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Based on the landlord's undisputed evidence, I find that the landlord is entitled to an Order of Possession and a Monetary Order as claimed.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the Order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord has established a claim for \$2400.00. Since the landlord was successful, I grant the landlord recovery of the \$50.00 filing fee for this application. Pursuant to Section 67 of the Act, I award the landlord a Monetary Order for the sum of \$2450.00.

This Order may be registered in the 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 18, 2011.

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Residential Tenancy Branch