



# Dispute Resolution Services

Page: 1

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 landlord provided affirmed testimony that on December 23, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant's rental unit address via registered mail. A Canada Post tracking number was provided as evidence of service. The mail was returned to the landlord.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 of the Act. A failure to pick up registered mail does not constitute a service failure. The tenant did not appear at the hearing.

### Preliminary Matter

A copy on the 10 Day Notice Ending Tenancy for Unpaid rent was not included with the Application. The landlord testified that a copy had been submitted as evidence via facsimile sent to the Residential Tenancy Branch on December 31, 2010.

I requested the landlord re-submit a copy of the Notice plus evidence of the facsimile transmission made on December 31, 2010. The landlord immediately supplied those documents for reference during this hearing and I was satisfied that the Notice had been properly submitted as evidence prior to this hearing.

The landlord also supplied a copy of the registered mail receipts in support of her testimony confirming service of Notice of this hearing to the tenant.

The Application was amended to include loss of January, 2011, rent.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on July 1, 2010, rent is \$750.00 due on the first day of each month. A deposit in the sum of \$375.00 was paid on June 23, 2010.

The landlord purchased the rental unit in October, 2010.

The building manager provided affirmed testimony that on December 6, 2010, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 16, 2010, was served by posting to the tenant's door at approximately 12 noon.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,260.00 within five days after the tenant is assumed to have received the Notice. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord testified that the tenant paid \$460.00 in November and since that time has paid \$500.00. The balance of December, 2010, rent was not paid and January 2011, rent has not been paid. The landlord issued a receipt for use and occupancy after the \$500.00 payment was made. The landlord is requesting compensation in the sum of \$1,290.00 in unpaid rent.

### Analysis

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 9, 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, 6, 2010, I find that the earliest effective date of the Notice is December 9, 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 19, 2010.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on December 19, 2010, pursuant to section 46 of the Act.

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; therefore, 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 that is effective 2 days after service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$1,290 for November and December, 2010 and January, 2011, and that the landlord is entitled to compensation in that amount.

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.

I find that the landlord is entitled to retain the tenant's security deposit, in the amount of \$375.00, in partial satisfaction of the monetary claim.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. 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 \$1,340.00, which is comprised of \$1,290.00 in unpaid November, December, 2010 rent; January, 2011 rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$375.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$965.00**. 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.

Dated: January 18, 2011.

---

Residential Tenancy Branch