



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MNR, FF, ET

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession, an early End to the Tenancy, a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery on February 3, 2011. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and Tenant in attendance.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

### Background and Evidence

This tenancy started in or about June, 2006 as a month to month tenancy. Rent is \$400.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$200.00 to the previous landlord, but he said he is not requesting this Landlord return the deposit.

The Landlord said that the Tenant did not pay \$400.00 of rent for November, 2010, \$400.00 of rent for December, 2010 and \$200.00 of rent for January, 2011, when it was due and as a result, on January 25, 2011 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 25, 2011 to the Tenants. The Landlord said the Tenant has unpaid rent for February, 2011 of \$400.00 as well.

The Landlord further indicated that the Tenant is living at the rental unit and the Tenant has told the Landlord that he will be moving out, but the Landlord said he wants an Order of Possession with an effective date for as soon as possible.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

The Tenant said that he has not paid his rent as agreed and the Landlord is right to end the tenancy with him. The Tenant continued to say that he will be moving out of the unit as soon as he can make arrangements for a new place to live. The Tenant said he thought that may be Thursday, February 17, 2011.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it was personally served on them, or on January 25, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than January 30, 2011.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for November, 2010 of \$400.00, December, 2010 of \$400.00, January 2011 of \$200.00 and February, 2011 of \$400.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$1,400.00
Recover filing fee	\$ 50.00
Subtotal:	\$1,450.00
 Balance Owing	 \$1,450.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,450.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

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Residential Tenancy Branch