



# 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 and utilities 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 January 21, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matters

The details of the dispute section of the Application indicated that the landlord was claiming compensation for damage to the rental unit. As the tenant continues to have legal possession of the unit, I declined to hear this portion of the claim as it was premature.

### Issue(s) to be Decided

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

Is the landlord entitled to a monetary Order for unpaid rent and utilities?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced June 1, 2010; rent is \$1,500.00 per month, due on the first day of each month. A deposit was not paid.

The landlord stated that on January 2, 2011, he and his spouse personally served the tenant with a ten (10) day Notice to End Tenancy for non-payment of rent, at approximately noon, at the rental unit address. The Notice had an effective date of January 12, 2011.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,500.00 rent and \$276.20 utilities within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was 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 provided a copy of a City of Vernon payment record made for water, sewer and garbage fees for the rental unit address. These costs were not included in the tenancy agreement services. A copy of the tenancy agreement was provided as evidence. The tenant has the utility bills go directly to his address. The records indicated that on January 1, 2011, a transfer in the sum of \$133.52 was made to the landlord's property taxes, as the result of unpaid utilities owed by the tenant. Since January, 2011, the tenant has incurred further costs in the sum of \$142.68. At the start of the tenancy the utility balance owed was zero.

The landlord checked the rental unit 3 days ago, by looking in the windows and determined that the tenant has not moved out; his belongings all remain.

### Analysis

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 January 12, 2011, 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 two 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 \$3,000.00 for January and February 2011, and that the landlord is entitled to compensation in that amount.

I find that the landlord is entitled to unpaid water, sewer and garbage utility costs in the sum of \$276.20; as indicated in the evidence submitted by 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

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 \$3,326.20, which is comprised of \$3,000.00 in unpaid January and February, 2011, rent; \$276.20 in utility costs and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of **\$3,326.20**. 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: February 02, 2011.

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