



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### Dispute Codes:

**OPR, MNR, MND, 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 damage to the rental unit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that in the company of 2 police officers, on February 3, 2011, at 6 p.m. she personally served the tenant copies of the Application for Dispute Resolution and Notice of Hearing.

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

### Preliminary Matter

The portion of the landlord's claim related to damages did not proceed, as the tenancy has yet to end. The landlord is at liberty to submit a future application in relation to damages.

### 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 for unpaid rent?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced in August 2010, rent is \$1,200.00 due on the first day of each month. The \$600.00 deposit paid was deducted from December, 2010, rent owed.

The tenant paid an additional \$100.00 rent in December, 2010, resulting in arrears of \$500.00 and has not paid January or February, 2011, rent owed in the sum of \$2,400.00.

The landlord stated that on January 25, 2011, at 5 p.m. a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of February 3, 2011, was served by posting to the tenant's door with a neighbour present as a witness.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,700.00 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.

### 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 January 28, 2011.

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 January 28, 2011, I find that the earliest effective date of the Notice is February 7, 2011.

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 February 7, 2011.

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 February 7, 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 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 \$500.00 for December 2010, and \$2,400.00 for January and February, 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.

The landlord previously allowed the tenant to deduct the deposit from December, 2010, rent owed.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after the Order has been served 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 \$2,950.00, which is comprised of \$2,900 in unpaid December, 2010; January, 2011 and February 2011, rent 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 for the balance of \$2,950.00. 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: February 17, 2011.

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Residential Tenancy Branch