



# 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, 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 February 7, 2011, at 12 noon, he personally served copies of the Application for Dispute Resolution and Notice of Hearing to the tenant at the rental unit address, with his witness present.

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.

### 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 fixed term tenancy commenced on August 23, 2008 and was to end on August 31, 2011. A copy of the tenancy agreement signed by the parties on October 30, 2010 was supplied as evidence. The landlord purchased the property in October 2010, and the first month's rent he was to collect was for November, 2010. A deposit in the sum of \$412.50 was paid in August, 2010.

The landlord stated that on January 29, 2011, at 12 noon he personally served a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of February 7, 2011. The Notice was issued on January 3, 2011. The copy of the Notice supplied as evidence was signed by the tenant.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,480.00 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 Notice indicated that the rent was due on November 1, 2010; the landlord stated that the Notice was issued for rent owed from November 1, 2010, to January 1, 2011; inclusive.

Since the landlord purchased the unit the tenant has not paid rent totalling 4 months in the sum of \$3,300.00.

### Analysis

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 8, 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 8, 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 \$3,300.00 for November 2010 to February, 2011, inclusive, 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 \$412.50, 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 \$3,350.00, which is comprised of \$3,300.00 in unpaid 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 \$412.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$2,937.50**. 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 18, 2011.

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Residential Tenancy Branch