



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

OPR, MNR, MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent / loss of revenue - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and provide relevant testimony in respect to his matter and to make relevant prior submission to the hearing and fully participate in the conference call hearing. The tenant continues to reside in the rental unit.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

There is an abundance of conflicting and contrasting testimonial evidence in this matter. The landlord has also provided some document evidence. The testimony of both parties is that the tenancy between this landlord and this tenant began on December 03, 2010. Rent in the amount of \$800 is payable each month. The landlord has not collected a security deposit from the tenant.

The parties signed a "Rental Agreement" dated December 09, 2010 in which the parties agreed on the amount of rent, arrears of rent for December 2010 in the amount of \$400, payment of utilities; and, that the tenant would vacate "by Jan. 2011". The testimony of the parties is that this means before the start of January 2011, or December 31, 2010. The tenant failed to pay all of rent for the first month of the tenancy – paying only \$400. On the following day of December 10, 2010 the parties signed a Residential Tenancy reflecting some of the same particulars of the prior "Rental Agreement". The Tenancy

Agreement states the tenancy started on December 03, 2010, rent of \$800 per month payable on the 10<sup>th</sup>. day of the month, that the periodic rent amount is inclusive of utilities: water, electricity, heat, cablevision and laundry. However, I am provided with details in the submitted application that the tenant owes for utilities for December 2010 and utilities for January 2011. The tenancy agreement also states it is for a fixed length of time for 1 month, ending on December 31, 2010; however, the Tenancy Agreement does not indicate or reference what may or what must occur at the end of the fixed length of time.

The landlord claims that the tenant agreed to the tenancy for only the month of December 2011. The landlord also claims that the tenant only paid one half of the rent for December, and refused to vacate at the end of the times referenced in the two agreements. The landlord claims the parties verbally agreed to extend the agreements to January 15, 2010, rather than give the tenant a Notice to End. The landlord then acted on the verbal agreement of January 15, 2011 and on that agreement secured new tenants for the following week, at considerably higher rent; but, the respondent tenant did not vacate or provide the landlord with any further rent, and the landlord released the intended new tenants. The landlord seeks an Order of Possession, claiming the tenancy ended as per the Rental Agreement of December 09, 2010, and also seeks unpaid rent and loss of revenue based on the tenant's over-holding of the rental; unit and the failed intended tenancy of the new tenants. The landlord provided copies of cheques from the tenant: rejected by the bank for insufficient funds or due to stop payment of funds by the tenant. The tenant testified she placed a stop payment on one cheque and that she is in possession of a *receipt for a rent cheque* for January 2011.

The tenant claims she has been under a great deal of stress and in her words is destitute. She testified she signed the Rental Agreement of December 09, 2010, and the Tenancy Agreement of December 10, 2010, and that she intended to vacate December 31, 2010 - and later January 15, 2011. She claims she signed the Tenancy Agreement under duress, as when she did so she was aware she had no financial means to pay the rent and to this day wants to rely on the landlord's "eviction" notice (Notice to End) to purportedly secure financial assistance. The tenant claims she wants to vacate, but financially cannot do so without financial assistance – which purportedly would be forthcoming upon receiving a Notice to End.

### **Analysis**

On reflection of the testimony of both parties, and on the preponderance of the evidence and on balance of probabilities, I find that the combination of the Rental Agreement and the Tenancy Agreement in this matter provide sufficient basis and support of a mutual

agreement to end the tenancy December 31, 2010. I am also satisfied from the testimony of both parties that this agreement was verbally extended to January 15, 2011- but not later. I also find the relevant evidence in this matter from both parties is that the tenant has not paid rent for occupancy of the rental unit since the initial amount of \$400 paid in December 2010, and relied on a Notice to End from the landlord to pay the rent and afford her to vacate the rental unit. I find the landlord's accounting of utilities is sufficiently ambiguous and inconsistent with the document evidence that I must **dismiss** any claim or evidence respecting utilities.

As a result of all the above, I find this tenancy ended January 15, 2011 and the landlord is thus entitled to an **Order of Possession as requested.**

In respect to the landlord's application for a Monetary Order, I find the landlord's accounting of unpaid rent and loss of revenue is, in the least, ambiguous. I find that on the basis of the verbal agreement the tenancy could end on January 15, 2011, that the evidence does not support the landlord acted with proper cause or authority in securing new tenant's for the week following. I find that the landlord ought to have known from their experience in this tenancy that they required better assurance of their ability to enter into a new tenancy agreement. Therefore, I dismiss the landlord's claim for loss of revenue based on the intended new tenancy. I find, however, that the testimonial evidence is clear the respondent tenant paid an initial \$400 in December and has not paid rent since then, and is obligated to compensate the landlord for over-holding of the rental unit at rent established by the Rental and Tenancy Agreements, of \$800 per month inclusive of utilities. I grant the landlord unpaid rent for December 2010 in the amount of \$400, Unpaid rent for January 2011 in the amount of \$800, and unpaid rent up to February 14, 2011 in the amount of \$400, with leave to reapply for the remainder of February 2011, if necessary. The landlord's monetary claim is granted in the sum of \$1600. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$1650.**

***Calculation for Monetary Order***

Rental Arrears – December 2010	\$400.00
Rent – January 2011	800.00
Rent – February 1 – 14, 2011	400.00
Filing Fees for the cost of this application	50.00
<b>Total Monetary Award</b>	<b>\$1650.00</b>

## **Conclusion**

**I grant** an Order of Possession to the landlord **effective 2 days from the day it is served upon the tenant**. The tenant must be served with this **Order of Possession**. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I grant** the landlord an order under Section 67 of the Act for the amount of **\$1650**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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*.