



# 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 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 / utilities - Section 67
3. A Monetary Order for damages to the unit – Section 67
4. An Order to recover the filing fee for this application - Section 72

Both parties attended the conference call hearing. I accept the landlord's evidence that they served the tenant with Notice of Dispute Resolution Hearing in accordance with Section 89 of the Residential Tenancy Act (the Act), and the tenant acknowledges receiving it. The tenant advised they are still occupying the rental unit.

### **Preliminary Matters**

The landlord's testimony is that they served their subsequent evidence of 47 pages, by giving it to another tenant in another rental unit of the residential property. The respondent in this matter denies receiving the evidence package. I made a preliminary finding that the landlord did not serve the tenant in this matter with evidence for this hearing in accordance with Section 88 of the Act. However, I am satisfied that the tenant received the 10 Day Notice for Unpaid Rent and is fully cognoscente of the issue of unpaid rent and does not dispute they owe the rent. Section 88 of the Act states as follows;

#### **How to give or serve documents generally**

- 88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;

- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

It is my preliminary finding that the landlord's monetary claim for damages and other non-rent items is premature and for which they have not served the tenant with the evidence to advance this portion of their claim. As there is no prejudice to the tenant in respect to the claim for damages and all other non-rent monetary claims, the non-rent portion of the landlord's monetary claim **is dismissed**, with leave to reapply.

The landlord was given full opportunity to present their testimony and claim for an Order of Possession and unpaid rent.

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

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenancy began on July 04, 2010. Rent in the amount of \$1150 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord

collected a security deposit and pet damage deposit from the tenant in the total of \$650. The tenant failed to pay rent in the month of December 2010 and January 2011 and on January 05, 2011 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of February 2011. The landlord claims that the tenant also owes utilities according to the amount formulated within the tenancy agreement, but has not provided evidence in this regard, to this hearing or the tenant. The quantum of the landlord's monetary claim is for the unpaid rent of **\$3450**. The landlord has expressly not applied to retain the security deposit in partial satisfaction of any monetary claim.

### **Analysis**

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

Based on the above facts I find that the landlord is entitled to an **Order of Possession**.

I also find that the landlord has established a monetary claim for **\$3450** in unpaid rent. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$3500**. The security deposit will not be used to off-set the award made herein, and must be administered at the end of the tenancy.

With respect to the landlord's claim for utilities – this portion of the landlord's claim has been dismissed with leave to reapply.

### ***Calculation for Monetary Order***

Rental Arrears for Dec. 2010	\$1150.00
Rental Arrears for Jan. 2011	\$1150.00
Rental Arrears for Feb. 2011	\$1150.00
Filing Fees for the cost of this application	50.00
<b>Total Monetary Award</b>	<b>\$3500.00</b>

### **Conclusion**

**I grant** an Order of Possession to the landlord **effective 2 days from the day it is served on 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 **\$3500**. 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*.