



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes**

OPC, MNR, MNSD, FF

### **Introduction**

This was the hearing of an application by the landlord for an Order of Possession and a monetary order for unpaid rent and to retain the security deposit in partial satisfaction of the monetary claim. The hearing was conducted by conference call. Although the tenant was served with the application for dispute resolution and Notice of Hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not call into the conference and did not participate in the hearing. The landlord provided proof of the registered mail. The landlord testified that the tenant still resides in the rental unit. The landlord further seeks to recover the filing fee for this application.

### **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**

On January 29, 2011 the tenant was served with a One month Notice to End Tenancy for Cause, by personal delivery to the tenant. The tenant has not / did not file an application to dispute the Notice to End Tenancy within the required 10 days to do so.

In respect to the landlord's monetary claim for unpaid rent, the landlord testified that the rent is current, but that they are claiming for contemplated loss of future revenue as the landlord has already determined that there is a quantum of remediation to be done to the unit because of the tenant's conduct or neglect which will render the unit un-rentable for some weeks.

## **Analysis**

Section 47 of the Act provides that if a tenant does not apply to dispute a 1 Month Notice to End Tenancy for Cause within 10 days after receiving it, the tenant is conclusively presumed to have accepted the Notice to End and that the tenant must vacate the rental unit and the tenancy ends on the effective date of the Notice. As the tenant did not file an application by February 08, 2011, the landlord, upon their application, becomes entitled to an **Order of Possession**.

The landlord has not provided evidence in support of their monetary claim for unpaid rent. On reflection, I find that their claim to retain the security deposit is premature given that the tenant still resides in the unit and that the security deposit must be administered in accordance with the Act at the end of the tenancy. If necessary it is available to the landlord to apply for loss of revenue or to retain the security deposit once the tenancy has ended. The monetary portion of the landlord's current application **is dismissed** with leave to reapply.

The landlord is entitled to recovery of the **\$50** filing fee paid for this application.

## **Conclusion**

**I grant an Order of Possession** to the landlord **effective February 28, 2011**. 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 order** that the landlord may retain **\$50** from the tenant's security deposit in satisfaction of the award for recovery of the filing fee.

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*.