



# 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 dealt with the landlord's application seeking an Order of Possession and monetary relief related to the tenant's failure to pay rent.

The landlord appeared, provided documentary evidence in advance of the hearing and gave affirmed oral testimony. The landlord provided documentary evidence confirming that the tenant was served with notice of this application and hearing by registered mail on January 27, 2011.

Based on the documentary evidence provided by the landlord, I am satisfied that the tenant was served with notice of this proceeding by registered mail and I deem that the tenant received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*.

I proceeded with the hearing in the tenant's absence.

### Issue(s) to be Decided

Did the tenant fail to pay the rent owed pursuant to the tenancy agreement entitling the landlord to an Order of Possession and monetary relief?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the unpaid rent?

### Background and Evidence

This tenancy began on August 1, 2009 for the monthly rent of \$925.00 and a security deposit of \$450.00 paid by the tenant on July 19, 2009. The tenancy was originally a fixed term for one year and then reverted to a month to month tenancy.

On January 10, 2011 the landlord served the tenant with a 10 day Notice to End Tenancy Due to Unpaid Rent by posting it to the door of the rental unit. The landlord

testified that the tenant's rent for both December 2010 and January 2011 was returned due to non-sufficient funds. The landlord stated that the February 2011 rent has also been returned due to non-sufficient funds.

The landlord stated that they entered the rental unit on January 24, 2011, after posting written notice in accordance with section 29 of the *Act*, to determine whether the rental unit was abandoned. The landlord stated that it is apparent that the tenant has not been in the rental unit for some time but all of the tenant's possessions are still in the rental unit.

The landlord seeks an Order of Possession and a monetary claim for the sum of **\$2,900.00** comprised of three months outstanding rent, \$75.00 in N.S.F. charges pursuant to the tenancy agreement and recovery of the \$50.00 filing fee paid for this application. The landlord also requests to retain the tenant's security deposit of \$450.00 in partial satisfaction of this claim.

### Analysis

Based on the evidence provided by the landlord I find that the tenant has failed to pay the rent owed of \$2,775.00 for December 2010, January and February 2011 as required by the tenancy agreement. I find that the tenant was served with a 10 day Notice to End Tenancy due to Unpaid rent and that the tenant failed to either pay the outstanding rent or to file an application for Dispute Resolution to dispute the notice in the five days provided by section 46(4) of the *Act*.

Pursuant to section 46(5) of the *Act*, I find that the tenant has conclusively accepted the end of the tenancy agreement effective January 23, 2011 and on this basis I grant the landlord's application seeking an Order of Possession for the rental unit.

I find that the landlord has established a total monetary claim in the amount of **\$2,900.00** comprised of three months outstanding rent, \$75.00 in N.S.F. charges pursuant to the tenancy agreement and recovery of the \$50.00 filing fee paid for this application. From this sum I Order that the landlord may retain the tenant's security deposit of \$450.00 in partial satisfaction of this debt leaving an outstanding balance owing of **\$2,450.00**.

Conclusion

I find that the landlord is entitled to an Order of Possession of the rental unit effective **two (2) days** after it has been served upon the tenant. This Order may be 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 due to breach of the tenancy agreement by the tenant for the sum of **\$2,450.00**. This Order may be filed with the Province of British Columbia 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*.

Dated: February 07, 2011.

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Residential Tenancy Branch