



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

### Dispute Codes:

OPR, CNR, MNR, MNSD, MNDC, ERP, RP, FF

### Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an 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, a monetary Order for money owed or compensation for damage or loss; 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 Agent for the Landlord #1 stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the Tenant on February 01, 2011. The Resident Manager stated that he witnessed service of these documents. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing. The hearing proceeded in the absence of the Tenant.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent, for an Order requiring the Landlord to make repairs to the rental unit, for an Order requiring the Landlord to make emergency repairs to the rental unit, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The hearing was scheduled for 10:30 a.m. on this date and by 10:41 a.m. the Tenant had not appeared. I find that the Tenant failed to diligently pursue her Application for Dispute Resolution and I therefore dismiss her Application without leave to reapply.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent and/or loss of revenue; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Agent for the Landlord #1 stated that this tenancy began on August 01, 2006; that the Tenant is currently required to pay monthly rent of \$1,495.00 on the first day of each month; and that the Tenant paid a security deposit of \$690.00 on June 21, 2006.

The Agent for the Landlord #1 stated that the Tenant still owes \$660.00 in rent from December of 2010, and \$1,495.00 in rent that was due on January 01, 2011. The Landlord is seeking compensation for loss of revenue, in the amount of \$1,495.00, as they have been unable to find new tenants for February of 2011, due to the continued occupancy of the rental unit.

The Resident Manager stated that the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent on January 03, 2011. The Tenant signed a Proof of Service document that corroborates this statement. The Notice declared that the Tenant owed \$1,495.00 in rent that was due on January 01, 2011 and that she must vacate the rental unit by January 13, 2011.

The Tenant filed an Application for Dispute Resolution disputing this Notice to End Tenancy on January 31, 2011.

### Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,495.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

I find that the Tenant still owes \$660.00 in rent from December of 2010 and \$1,495.00 in rent that was due on January 01, 2011. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,155.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. In the absence of evidence to the contrary, I find that on January 03, 2011 the Tenant was served with a Notice to End Tenancy that required the Tenant to vacate the rental unit on January 13, 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 paid the outstanding rent. Although the Tenant did file an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy, she did not file that Application until more than five days after she received the

Notice to End Tenancy. I therefore find that the Tenant accepted that the tenancy ended on January 13, 2011, pursuant to section 46(5) of the *Act*. On this basis I will grant the landlord an Order of Possession that is effective two days after this Order is served upon her.

I find that the Tenant's continued occupancy of the rental unit past the end date of this tenancy prevented the Landlord from entering into a new tenancy with another occupant on February 01, 2011. I therefore find that the Tenant must pay \$1,495.00 to the Landlord for the resulting loss of revenue.

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 the Landlord's Application for Dispute Resolution.

### Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon 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 \$3,640.00, which is comprised of \$3,590.00 in unpaid rent and loss of revenue plus \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$690.00 plus interest of \$22.76, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,927.24. 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.

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 11, 2011.

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Residential Tenancy Branch