



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### Dispute Codes

OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; late fees and NSF fees; authorization to retain the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that a former agent of the landlord personally served the tenant with the hearing documents on January 19, 2010. The former agent was not available to testify. In the absence of evidence to the contrary, I accepted the submission and found the tenant sufficiently served with notification of this hearing. If the tenant was not served, the tenant is at liberty to make an Application for Review.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to compensation for unpaid rent, late fees, and NSF fees?
3. Is the landlord entitled to retain the tenant's security deposit.

### Background and Evidence

The landlord provided the following evidence. The tenancy commenced April 1, 2009 and the tenant paid a \$360.00 security deposit. The tenant is required to pay rent of \$720.00 on the 1<sup>st</sup> day of every month. The tenancy agreement provides for payment of \$25.00 late fees and NSF fees. The tenant did not pay rent for January 2011 and on January 3, 2011 the former agent of the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates rent of \$770.00 was outstanding as of January 1, 2011 and has an effective date of January 13, 2011.

The landlord confirmed that the amount appearing on the Notice includes a late fee and NSF fee. The landlord was cautioned that such fees are not defined as "rent" and must not be included as "rent" on the Notice.

The landlord testified that the tenant did not pay any of the outstanding rent after receiving the 10 Day Notice. The landlord testified that he believed the tenant is still residing in the rental unit but that he has not seen the tenant in quite some time.

In making this application, the landlord requested compensation for unpaid rent for January 2011; however, during the hearing the landlord verbally requested that I amend the application to include loss of rent for February 2011. I declined the landlord's verbal request for amendment as I was not satisfied the tenant is still residing in the rental unit and the tenant has not been notified of the landlord's intent to seek compensation for February 2011.

Provided as documentary evidence for this hearing is a copy of the tenancy agreement, 10 Day Notice and Proof of Service for the 10 Day Notice signed by the former agent.

### Analysis

Where a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted the Notice and must vacate the rental unit by the effective date. I am satisfied the landlord served the tenant with a 10 Day Notice and the tenant did not pay the outstanding rent or dispute the Notice. Accordingly, I find the tenancy ended January 13, 2011.

With this decision I provide the landlord with an Order of Possession effective two days after service of the Order of Possession upon the tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlord is entitled to recover unpaid rent of \$720.00 from the tenant for the month of January 2011 and a late fee of \$25.00. I decline the landlord's request for an NSF charge as the landlord did not provide evidence of an NSF cheque.

I award the filing fee to the landlord and I authorized the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed by the tenant.

I provide for the landlord with this decision a Monetary Order calculated as follows:

Unpaid rent – January 2011	\$ 720.00
Late fee	25.00
Filing fee	50.00
Less: security deposit	<u>( 360.00)</u>
Monetary Order	<u>\$ 435.00</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

### Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$435.00 to serve upon the tenant.

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 03, 2011.

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Residential Tenancy Branch