



# 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 matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in payment of those amounts.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit and pet damage deposit and if so, how much?

### Background and Evidence

This fixed term tenancy started on September 1, 2010 and expires on August 31, 2011. Rent is \$1,200.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$600.00 on August 30, 2010 and a pet damage deposit of \$600.00 on November 1, 2010.

The Parties agree that on January 6, 2011, the Tenant paid \$600.00 of the rent due for January 2011 and withheld the balance because he believed he was entitled to be compensated for the loss of use of a stove. As a result, the Landlord served the Tenant in person on January 6, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 6, 2011. The stove was subsequently repaired and the Tenant paid rent for February 2011 in full on February 1, 2011 but was issued a receipt "for use and occupancy only." Rent of \$600.00 for January 2011 remains unpaid.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant was served in person with the 10 Day Notice to End Tenancy on January 6, 2011. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than January 11, 2011. I find that the Tenant has not paid all of the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

I also find that the Landlord is entitled to recover rent arrears in the amount of \$600.00 and a \$25.00 late fee pursuant to a term of the Parties' tenancy agreement to that effect. I further find that the Landlord is entitled pursuant to s. 72(1) of the Act to recover the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72(2) of the Act to keep the Tenant's security deposit of \$600.00 and \$75.00 of the pet damage deposit in full satisfaction of the monetary award.

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia. 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 02, 2011.

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Residential Tenancy Branch