



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This matter dealt with an Application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

### 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?

### Background and Evidence

This tenancy started on November 25, 2007. Rent is \$2,400.00 per month payable in advance on the 1<sup>st</sup> day of each month. On January 10, 2011 the Landlord served the Tenant by registered mail with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 10, 2011. The Notice alleged that the Tenant failed to pay rent for the month of January 2011 when it was due.

The Tenant made a payment of \$1,000.00 on January 28, 2011 for which he was issued a receipt stating the payment was "for use and occupancy only." The Tenant also made payments of \$1,400.00 (plus \$25.00 for a late fee) on February 10, 2011 and of \$600.00 on February 14, 2011. The Tenant said he was given receipts for these payments which stated the payments were for "rent." The Landlord's agent disagreed and argued that these 2 receipts would instead have said "for use and occupancy only" however she did not provide a copy of those receipts as evidence at the hearing.

### 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

ends on the effective date of the Notice and they must vacate the rental unit at that time. I find that the Tenant received the 10 Day Notice to End Tenancy on January 13, 2011. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than January 18, 2011.

I find that the Tenant did not pay the balance of the overdue rent for January 2011 until February 10, 2011 (after the effective date of the Notice) and has not applied for dispute resolution. However, the Tenant argued that the tenancy was reinstated when the Landlord accepted his rent payments of February 10<sup>th</sup> and 14<sup>th</sup> unconditionally. Although the Landlord's agent argued that the receipts would have stated the Tenant's payments this were for use and occupancy, she admitted that she did not have a copy of those receipts with her and she did not provide a copy of them as evidence at the hearing. Consequently, I conclude that the Landlord did reinstate the tenancy upon receiving the balance of the Tenant's rent payment for January 2011 and as a result, the 10 Day Notice to End Tenancy dated January 10, 2011 is cancelled.

I find that the Landlord is entitled to recover rent arrears in the amount of \$1,800.00 for February 2011 as well as the \$50.00 filing fee for this proceeding.

### Conclusion

The Landlord's application for an Order of Possession is dismissed without leave to reapply. A Monetary Order in the amount of \$1,850.00 has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 14, 2011.

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Residential Tenancy Branch