



# 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 as well as 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 August 1, 2009. Rent is \$1,100.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Landlord said the Tenant's rent cheque for December 2010 was returned for non-sufficient funds. Consequently, on January 25, 2011, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 25, 2011 by posting it to the rental unit door. The Landlord said the Tenant made a payment of \$500.00 on February 4, 2011 for which he was issued a receipt stating that it was a partial rent payment for December 2010.

### 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. Pursuant to s. 90 of the Act, the Tenant was deemed to receive the 10 Day Notice 3 days after it was posted or on January 28, 2011. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount no later than February 2, 2011.

I find that the Tenant made a payment of \$500.00 on February 5, 2011 (*after* the 5 days granted to cancel the Notice) and has not applied for dispute resolution. I find that the

tenancy was reinstated when the Landlord accepted the Tenant's partial rent payment of February 5<sup>th</sup> unconditionally and as a result, the 10 Day Notice to End Tenancy dated January 25, 2011 is cancelled. I also find that the Landlord is entitled to recover rent arrears in the amount of \$600.00 for December 2010 as well as the \$50.00 filing fee for this proceeding.

### Conclusion

A Monetary Order in the amount of **\$650.00** 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 16, 2011.

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Residential Tenancy Branch