



# 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 hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent / loss of revenue - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The Agent representing the Landlord was unable to say when the tenancy began and whether any amount was paid for a security deposit. Rent in the amount of \$600.00 is payable in advance on the first day of each month. The Tenant failed to pay rent for the

month of March 2011 and on March 3, 2011 the Landlord served the Tenant with a notice to end tenancy for non-payment of rent by posting the notice on the door of the unit. Information on the file indicates that the Tenant has not filed an Application for Dispute Resolution.

On April 1, 2011, the Tenant paid the rent for both March and April 2010. The Landlord's Agent states that upon receipt of this money, the Tenant requested that the Landlord cancel the Hearing. The Landlord's Agent informed the Tenant that if the \$50.00 filing fee arising from the Landlord's application was also not paid to the Landlord from the Tenant before the Hearing date, the Landlord would seek an Order of Possession at the Hearing. The Landlord states that no payment of the filing fee was received by the Tenant. The quantum of the Landlord's monetary claim is **\$50.00** and the Landlord seeks an Order of Possession with an effective date of April 30, 2011.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's testimony I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. Although the Tenant paid the outstanding rent on April 1, 2011, this rent was paid after the five day period provided for in the notice. The Tenant also did not apply for Dispute Resolution to dispute the notice. The Tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

Although the Landlord accepted payment on April 1, 2011 for rental arrears and for April rent, since the Landlord informed the Tenant at this point that they would not cancel their application and that they intended to pursue an Order of Possession at the

Hearing, I find that the monies accepted by the Landlord for April rent was for “use and occupancy only” to the end of April 2011. Given the above facts, I find that the Landlord is entitled to an **Order of Possession** with an effective date of April 30, 2011.

The Landlord is also entitled to recovery of the \$50 filing fee.

Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I FURTHER ORDER**, pursuant to section 72 that the tenant pay to the Landlord the sum of \$50.00 representing the fee paid under section 59.

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: April 11, 2011.

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Residential Tenancy Branch