



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O, OPR, MNR, MNSD, FF

### Introduction

Both parties have filed applications for dispute resolution. The Tenant has filed an application disputing that he did not receive a 10 day notice to end a tenancy. The Landlord has filed an application for an order of possession resulting from a 10 day notice to end the tenancy for unpaid rent, a request for a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave affirmed testimony.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?  
Is the Landlord entitled to a monetary order?  
Is the Landlord entitled to keep the security deposit?

### Background and Evidence

This tenancy began on January 15, 2011 on a month to month basis as shown in the Landlord's submitted signed tenancy agreement. The monthly rent is \$1,100.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$550.00 was paid.

The Landlord states that the notice of hearing and evidence package was served on April 8, 2011 by registered mail. The Landlord has provided the registered mail tracking #XXXX and #####. The Tenant disputes this stating that he has not received the package.

The Tenant's notice of hearing and evidence package was served in person on April 7, 2011. The Tenant has provided proof of service signed by the Landlord. The Landlord has confirmed receiving this package.

The Landlord states that a 10 day notice to end tenancy for unpaid rent was served by posting it on the rental unit door on March 16, 2011. The Landlord stated in direct testimony that 3 other notices were posted on the same day where those Tenants responded immediately thereafter. The Tenant disputes receiving this notice, but confirms in direct testimony to not paying rent.

The Landlord states that the Tenant is in rent arrears for March and April 2011 totalling, \$2,200.00 and a late rent fee for March of \$25.00. The Landlord has provided a rent cheque from the Tenants dated March 29, 2011. The Landlord stated that when she tried to deposit the cheque she was notified that there were non-sufficient funds in the account. The Landlord has also provided a Tenant rent ledger for the rental unit showing that the Tenants have been repeatedly late paying rent and that Tenants have been NSF on two out of two occasions that they paid rent.

### Analysis

Based upon the direct testimony and the evidence submitted I prefer the Landlord's evidence over that of the Tenant's. I am satisfied that the Tenant was properly served with the notice of hearing and evidence package by registered mail. I also prefer the evidence of the Landlord over that of the Tenant that a 10 day notice to end the tenancy was served by posting it on the rental unit door on March 16, 2011. On that basis, I am satisfied that the Tenant did not pay rent as confirmed in the Tenant's direct testimony and that no application for dispute resolution was filed within the allowed time frames. The Tenant is deemed served and accepting that the Tenancy is at an end.

Based upon the above facts, I find that the Landlord is entitled to an order of possession. The Tenant must be served with the 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.

As for the Landlord's monetary order, based upon the Tenant's direct testimony, I am satisfied that the Landlord has established a claim for \$2,200.00 in unpaid rent and a \$25.00 late rent fee for March. I note that the Landlord's application shows a \$2,325.00 monetary amount sought, but the Landlord has not specified what the \$100.00 difference is in reference to. In absence of those details, I dismiss the \$100.00

difference. I order that the Landlord retain the \$550.00 security deposit in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$1,675.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$1,675.00. The Landlord may retain the security deposit.

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 20, 2011.

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Residential Tenancy Branch