



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, late fees, loss of rent, authority to retain the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlord provided evidence that the tenant was served with the hearing documents via registered mail sent to the rental unit on April 4, 2011. The landlord also confirmed that the tenant was still residing in the rental unit at the time of mailing. Having been satisfied the tenant was sufficiently served with notice of this hearing I proceeded to hear from the landlord without the tenant present.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to compensation for unpaid rent, late fees, and loss of rent?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The one year fixed term tenancy commenced May 1, 2010 and the tenant paid a \$500.00 security deposit. The tenant is required to pay rent of \$1,000.00 on the 1<sup>st</sup> day of every month. The tenant agreement provides for the payment of late fees of \$25.00 per occurrence.

The tenant failed to pay rent for March 2011 when due and the landlord posted a 10 Day notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door on March 4, 2011. The Notice indicates \$1,025.00 was outstanding as of March 1, 2011 and has an effective date of March 17, 2011. The tenant paid \$580.00 after the Notice was served and nothing has been paid since.

The landlord confirmed that the outstanding rent on the Notice includes a late fee for March 2011. In making this application, the landlord is seeking to recover the balance

of unpaid rent for March, loss of rent for April 2011, late fees for March and April 2011, and anticipated loss of rent for May 2011.

Provided as documentary evidence was a copy of the Notice to End Tenancy, the tenancy agreement, and registered mail receipt.

### Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on March 17, 2011 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant. If the tenant does not comply with the Order of Possession the landlord may enforce it in The Supreme Court of British Columbia as an Order of that court.

I find the landlord entitled to recover unpaid rent and a late fee for the month of March 2011. I also award the landlord loss of rent for the month of April 2011. I do not award a late fee for April 2011 as the tenancy came to an end in March 2011. I dismiss the landlord's claim for anticipated loss of rent for May 2011 with leave to reapply.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

March rent	\$ 1,000.00
March late fee	25.00
Less: partial payment	(580.00)
April loss of rent	1,000.00
Filing fee	50.00
Less: security deposit	<u>(500.00)</u>
Monetary Order	\$ 995.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$995.00 to serve upon the tenant.

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 28, 2011.

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Residential Tenancy Branch