



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession and Monetary Order for unpaid rent and authority to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the tenant was notified of this proceeding by registered mail sent to the rental unit on May 20, 2011 and the landlord confirmed the tenant is still residing at the rental unit. The landlord provided a registered mail tracking number as proof of service and stated that Canada Post has made three attempts to deliver the registered mail. I was satisfied the tenant was sufficiently notified of this hearing and I proceeded to hear from the landlord without the tenant present.

### Issue(s) to be Determined

Is the landlord entitled to an Order of Possession for unpaid rent?  
Is the landlord entitled to a Monetary Order for unpaid rent?  
Is the landlord authorized to retain the tenant's security deposit?

### Background

The tenancy commenced November 10, 2010 and the tenant paid a \$375.00 security deposit. The tenant is required to pay rent of \$750.00 on the 1<sup>st</sup> day of every month in accordance with the written tenancy agreement.

The landlord testified that the tenant failed to pay \$150.00 of the rent for April 2011 and did not pay rent for May 2011. The landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on May 8, 2011. The Notice has a stated effective date of May 8, 2011 and indicates the tenant failed to pay rent for May 2011 and \$150.00 of the rent for April. The landlord testified that the tenant did not pay the outstanding rent after being served the Notice and the tenant continues to reside in the rental unit. Nor has the tenant paid any monies to occupy the unit for June 2011.

In making this application the landlord is seeking to recover the unpaid rent for April and May 2011 as well as loss of rent for June 2011.

The landlord provided a copy of the tenancy agreement and 10 Day Notice as documentary evidence for this proceeding.

### 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 Notice was served on May 8, 2011 the effective date of the Notice is automatically changed to read May 18, 2011 in accordance with section 52 of the Act.

As the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on May 18, 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 for April and May 2011 and since the tenant continues to occupy the rental unit I also find the landlord entitled to loss of rent for the month of June 2011.

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:

April 2011 unpaid rent	\$ 150.00
May 2011 unpaid rent	750.00
June 2011 loss of rent	750.00
Filing fee	50.00
Less: security deposit	<u>(375.00)</u>
Monetary Order	\$1,325.00

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

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: June 14, 2011.

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Residential Tenancy Branch