



# 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 is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue, to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent PC testified that he mailed the Notice of Hearing documents and copies of the Landlord's documentary evidence to the Tenant, by registered mail, on May 18, 2011. The Landlord's agent provided the tracking number for the documents.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent, parking and late fees?

### **Background and Evidence**

A copy of the Tenancy Agreement; Notice to End Tenancy issued May 6, 2011 (the "Notice"); and proof of service of the Notice to End Tenancy were provided in evidence.

This tenancy began on December 1, 2009. Monthly rent is \$1,570.00 due on the first day of each month. The Tenant paid a security deposit in the amount of \$785.00 at the beginning of the tenancy. There is a provision in the Tenancy agreement for late fees in the amount of \$25.00.

The Landlord served the Tenant with the Notice by posting the document to the Tenant's door on May 6, 2011. The Tenant has not paid the outstanding rent nor has he filed an Application for Dispute Resolution to cancel the Notice.

The Landlord seeks a monetary award, calculated as follows:

Balance outstanding from April, 2011	\$81.98
Unpaid rent for May, 2011	\$1,570.00
Late fees for May rent	\$25.00
Unpaid parking fees for May	\$45.00
Loss of income for June, 2011	\$1,570.00
Late fees for June rent	\$25.00
Unpaid parking fees for June	<u>\$45.00</u>
TOTAL	\$3,361.98

The Tenant concurred with the Landlord's agent's testimony, except that parking fees were \$40.00 per month. He stated that he gave the Landlord notice that he would be moving out at the end of June, 2011. The Tenant stated that he would pay the Landlord what he owed as soon as he could, but that he was experiencing financial difficulties.

### **Analysis**

Based on the testimony of both parties, I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on May 6, 2011. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on May 19, 2010. The Tenant is overholding and the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

The Landlord did not provide a copy of the parking agreement in evidence. The Tenant stated that parking was \$40.00 per month, and therefore I allow the Landlord's claim for \$40.00 in unpaid parking for the month of May. There is a clause in the tenancy agreement for late fees of \$25.00 on unpaid rent. Therefore, I allow the Landlord's claim for \$25.00 in late fees for the month of May, 2011.

I find that the Landlord is entitled to loss of revenue for the month of June, but not for parking fees or late fees. The parking agreement is a separate agreement from the tenancy agreement and a future tenant might not have use of a parking space. The late fee is for late payment of **rent**. The tenancy ended on May 19, 2011, and therefore the Tenant does not owe **rent** for the month of June. Rather, the Landlord is awarded \$1,570.00 for loss of revenue because the Tenant is overholding.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary award. No interest has accrued on the security deposit.

The Landlord has been successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

The Landlord has established a monetary claim as follows:

Unpaid rent and loss of rent	\$3,221.98
Late fees for May, 2011	\$25.00
Recovery of the filing fee	\$50.00
Subtotal	\$3,336.98
Less security deposit	- \$785.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$2,551.98</b>

## **Conclusion**

I hereby provide the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$2,551.98** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: June 09, 2011.

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Residential Tenancy Branch