



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on May 20, 2011, at 12:51 p.m. copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the male tenant at the address noted on the Application, with a witness present.

The female tenant was not served with Notice of this hearing, as required by section 89(1) of the Act; however service was completed as required by section 89(2) of the Act, for the purpose of an application requesting an Order of possession. Therefore, the landlord was informed that the monetary claim could proceed against the male tenant only.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenants did not appear at the hearing.

### Preliminary matter

The application was amended to include unpaid June, 2011, rent.

The landlord stated that a copy of the tenancy agreement was submitted via facsimile on May 20, 2011; however, a copy of the agreement was not before me during the hearing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on November 18, 2010; rent is \$1,250.00 per month, due on the first day of each month.

The landlord stated that on May 3, 2011, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of May 13, 2011, was served by posting to the tenant's door at 12 noon, with a witness present.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,650.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The tenants have not paid April, May or June, 2011, rent owed in the sum of \$3,750.00.

The landlord requested late and NSF fees; however the term of the tenancy agreement which was read by the landlord included fees in the sum of \$50.00.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenants received the Notice to End Tenancy on May 6, 2011.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on May 6, 2011, I find that the earliest effective date of the Notice is May 16, 2011.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was May 16, 2011.

In the absence of evidence to the contrary, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on May 16, 2011, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for

Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenants.

In the absence of evidence to the contrary, I find that the tenants have not paid rent in the amount of \$3,750.00 for April to June, 2011, inclusive, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

As the term referencing fees in the tenancy agreement exceeded that permitted by the Regulation; the claim for fees is dismissed. The maximum fee for NSF or late fees is \$25.00.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$3,800.00, which is comprised of \$3,750.00 in unpaid April to June, 2011, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$3,800.00. In the event that the tenants do not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The monetary claim against the female tenant is dismissed.

Dated: June 13, 2011.

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Residential Tenancy Branch