



# 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 convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord Commission attended the conference call hearing and provided affirmed testimony as well as evidence prior to the commencement of the hearing. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on May 18, 2011, the tenant did not attend. All evidence and the testimony provided have been reviewed and are considered in this Decision.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

### **Background and Evidence**

This month-to-month tenancy was transferred to the BC Housing Management Commission and a new tenancy agreement was completed by the parties on February 21, 2008, although the tenant moved into the rental unit sometime prior. Rent in the amount of \$650.00 per month is currently payable in advance on the 1<sup>st</sup> day of each month. No security deposit or pet damage deposit was collected by the landlord.

The landlord's agent testified that in order to qualify for subsidized housing, the tenant must provide an annual declaration of income and assets, or the rental amount becomes adjusted to the current market value. In this case, the landlord's agent testified that the tenant was sent a notice that the declaration was expiring on March 31, 2011, and the tenant did not provide a current one by that date. The current market value is \$650.00 per month, and the subsidized rent was \$477.00.

The landlord's agent further testified that the tenant failed to pay rent when it was due in the month of March, 2011, and the agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing. The notice states that the tenant failed to pay rent in the amount of \$5,401.00 that was due on March 1, 2011; it is dated March 17, 2011, and contains an expected date of vacancy of March 30, 2011. He further testified that the notice was served by registered mail on March 22, 2011 and confirmed with the Post Office that the tenant received it on March 28, 2011. He testified that the tenant had been in arrears prior, and provided a copy of a letter dated April 10, 2010 addressed to the tenant which sets out the current rental amounts for the subsidized housing at \$327.00 per month in addition to instalments on the arrears at \$150.00 per month, for a total of \$477.00 per month. The arrears to the end of May, 2011 now amount to \$1,800.00. The landlord also claims rent for the month of June, 2011, and testified that the tenant paid \$1,150.00 on June 2, 2011. The landlord claims unpaid rent in the amount of \$1,300.00 and an Order of Possession.

### **Analysis**

The *Residential Tenancy Act* states that a tenant must pay rent when it is due. I have reviewed the tenancy agreement, which states that rent is payable in advance on the first day of each month. I also accept the evidence of the landlord's agent that the tenant is in arrears of rent the sum of \$1,300.00.

The *Act* also states that if a tenant fails to pay rent when it is due, the landlord may issue a notice to end the tenancy on any date after the date rent is due, and once served, the tenant has 5 days to pay the rent in full or apply for dispute resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out by that date. In this case, I accept the evidence of the landlord that the notice to end the tenancy was served by registered mail on March 22, 2011 and is deemed to have been received by the tenant 5 days later, or March 27, 2011. The landlord's agent testified that the notice was picked up by the tenant on March 28, 2011. I find that the tenant did not pay the rent in full within 5 days or apply for dispute resolution and is therefore is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. However, I also find that the effective date of the notice ought to be changed, pursuant to Section 53 of the *Residential Tenancy Act* to the soonest date that complies with the *Act*, which I find is April 6, 2011.

The tenant paid the landlord \$1,150.00 on June 2, 2011 and there is no evidence that the landlord or its agents issued a receipt or some other written notice that the rental

payment was being accepted for Use and Occupancy Only, however, I refer to Landlord and Tenant Fact sheet RTB-124 which states: "If a dispute arises, the landlord must prove the payment was accepted for use and occupation only and not to reinstate the tenancy." In this case, I find that no dispute has arisen; the tenant has not disputed the notice and did not attend the hearing, and therefore, I find that the landlord has not reinstated the tenancy and the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and the landlord is entitled to an Order of Possession.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### **Conclusion**

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. The tenant must be served with the Order of Possession. If the tenant is served with the order and the tenant fails 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.

I further grant a monetary order in favour of the landlord, pursuant to Section 67 of the *Residential Tenancy Act*, in the amount of \$1,350.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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 13, 2011.

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Residential Tenancy Branch