



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPR, MNR, MNSD, 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, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on May 20, 2011, the tenant did not attend. The landlord provided proof of service, and I am satisfied that the tenant has received the notice required under the *Residential Tenancy Act* and Rules of Procedure of today's hearing.

All evidence and testimony provided has been reviewed and is 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?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### **Background and Evidence**

The landlord testified that this fixed term tenancy began on September 1, 2010 and expires on July 31, 2011, and the tenant still resides in the rental unit. Rent in the amount of \$1,200.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$600.00, and no pet damage deposit was collected.

The landlord further testified that the tenancy agreement provides for a late fee of 2%, or \$24.00 if rent is not paid by the 1<sup>st</sup> day of the month. The agreement also states that the tenant is responsible for \$100.00 per month toward the Terasen Gas and BC Hydro costs for 6 months of the year, which he testified was agreed by the parties to run from December to May each year. A copy of the tenancy agreement was provided in advance of the hearing.

The landlord also testified that the tenant failed to pay rent when it was due in May, 2011 and has not paid the \$100.00 utility costs for the month of May, 2011. He also stated that he has provided phone and cable services, and the tenant owes \$25.00 for the phone and \$13.00 for renting 2 movies through the cable company, although those items are not stated as included in the tenancy agreement.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 6, 2011 by personally serving the tenant's adult son who apparently resides in the rental unit. A copy of that notice was provided in advance of the hearing and it is dated May 6, 2011 and states that the tenant failed to pay rent in the amount of \$1,200.00 that was due on May 1, 2011 and failed to pay utilities in the amount of \$150.00 following written demand on May 1, 2011. The notice contains an expected date of vacancy of May 6, 2011, which is the same day that the notice was issued. The landlord testified that it's an error and ought to read May 16, 2011. The tenant has not paid rent for the month of June, and the landlord claims \$2,400.00 in unpaid rent, \$100.00 for the gas and hydro, \$25.00 for the phone, \$13.00 for 2 movies, and \$24.00 for a late fee.

### **Analysis**

I have reviewed the evidence provided by the landlord, and I find that the landlord has failed to establish that the tenant is responsible for the phone or the cable costs. With respect to the unpaid rent, I accept the evidence of the landlord, and find that the tenant owes \$2,400.00 for the months of May and June, 2011. I also find that the tenant is responsible for \$100.00 for the utility costs for gas and hydro. The landlord is also entitled to a late fee of \$24.00 per month for the months of May and June, 2011, for a total of \$2,548.00.

I have also reviewed the notice to end the tenancy which I accept was served on the tenant by serving an adult who apparently resides in the rental unit on May 6, 2011, and that both pages of the notice were served. The *Residential Tenancy Act* states that a tenant may dispute the notice or pay the rent in full within 5 days of service of the notice. If the tenant fails to do so, the tenant is conclusively presumed to have accepted

that the tenancy ends on the effective date of the notice. The *Residential Tenancy Act* also states that if a landlord or a tenant gives notice to end a tenancy effective on a date that does not comply with the *Act*, the notice is deemed to be changed to the earliest date permitted, and I find that the correct effective date of the notice is May 16, 2011. I further find that the tenant has not disputed the notice and has not paid the rent in full and therefore, 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 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 order the landlord to keep the security deposit in the amount of \$600.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$1,998.00. 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 15, 2011.

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Residential Tenancy Branch