



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNDC OLC RP LRE RR FF O OPR

### Introduction

This hearing was originally convened on May 18, 2011 on an application by the tenant. The tenant applied for monetary compensation and a reduction in rent, as well as orders for repairs, an order that the landlord comply with the Act, and an order suspending or setting conditions on the landlord's right to enter the rental unit. The tenant also sought clarification regarding who to pay her rent to. The tenant named the owner as the respondent on her application.

On May 18, 2011, the tenant, the owner and an agent for the landlord, DS, participated in the teleconference hearing. At that time, the tenant had submitted late evidence that the landlord had not yet received. The landlord stated that there was a substantial amount of unpaid rent, and that the landlord intended to file an application for an order of possession for unpaid rent. I adjourned the hearing at that time to allow time for the landlord to receive the tenant's evidence, as well as for the landlord to file their own application. The owner very specifically stated that DS, an employee of the property management company PPML, was her agent, and that the tenant ought to deal with DS and the property management company. The tenant refused to deal with DS.

The hearing reconvened on July 13, 2011, and the landlord's application was joined to be heard with the tenant's application. The landlord applied for an order of possession pursuant to a notice to end tenancy for unpaid rent, as well as for a monetary order for unpaid rent and an order to retain the security deposit in partial compensation of the claim. The landlord's application named the property management company as the landlord.

The tenant had again submitted late evidence that the landlord had not yet received. A portion of the tenant's late evidence was a request to amend her application to increase the monetary claim, and another portion was the tenant's response to the landlord's application. The tenant confirmed that she only sent a copy of her evidence to the owner, and not to the property management company. I did not admit the tenant's late evidence, and declined to amend the tenant's application. The tenant stated that she

had made another application for her additional monetary claim, which was scheduled to be heard on October 11, 2011.

I determined that the issue of the order of possession took precedence, and proceeded to hear evidence from all parties regarding the notice to end tenancy for unpaid rent.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy began on September 28, 2010, with monthly rent in the amount of \$1800 payable in advance on the first day of each month.

The evidence of the landlord regarding the notice to end tenancy for unpaid rent was as follows.

The tenant gave the owner some post-dated cheques in March or April, but when she tried to deposit the cheques they were returned for insufficient funds. The landlord has not received any rent since that time.

On April 27, 2011 the landlord's agent, DS, posted on the rental unit an envelope containing several documents, including a 10 day notice to end tenancy for unpaid rent, and a one month notice to end tenancy for repeated late payment of rent. On May 10, 2011 the landlord sent a letter to the tenant by registered mail which confirmed that the owner had hired the property management company and DS to act as her agent.

The tenant's response regarding the notice to end tenancy for unpaid rent was as follows.

The tenant received the envelope that was posted on her door, but the envelope was empty and only a notice of inspection was stapled on the outside of the envelope. The tenant did not receive a copy of the notice to end tenancy until she received the landlord's application for dispute resolution, on June 28, 2011.

The tenant acknowledged that she was aware there was substantial outstanding rent that she had not paid. The tenant did not file to dispute the notice or pay the outstanding rent. The tenant stated that she was waiting for clarification about who to pay her rent to, and did not want to cancel the post-dated cheques she had previously provided. The tenant also stated that she had already given her written notice to the landlord that she intended to vacate the rental unit at the end of the month (July 2011).

### Analysis

I found that at the very latest, the tenant received the notice to end tenancy on June 28, 2011. The notice clearly states that the tenant has five days to pay the rent to the landlord or file an application for dispute resolution, or she may be evicted. The tenant chose not to pay the rent or apply to dispute the notice.

There is no provision under the Residential Tenancy Act for me to provide “clarification” for a party. I note that the definition of “landlord” in the Act includes the landlord’s agent or another person who acts on behalf of the landlord. The tenant had received clear instructions from the landlord on more than one occasion that the property management company and DS were the landlord’s agent and that the tenant was to deal with the agent, and yet the tenant refused to do so.

I found that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant has not paid the outstanding rent and has not applied for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted the notice. I therefore find that the landlord is entitled to an order of possession.

### Conclusion

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail 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.

As the tenancy is ending, I find it is not necessary to consider the portions of the tenant’s application regarding orders for repairs, an order for the landlord to comply with the Act, or an order setting limits on the landlord’s right to enter the rental unit. I accordingly dismiss those portions of the tenant’s application.

I adjourn the remainder of the tenant’s application and the remainder of the landlord’s application to be joined and heard with the tenant’s second application on October 11, 2011. The parties will separately receive notice of the reconvened hearing.

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: July 14, 2011.

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Residential Tenancy Branch