



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent, authorization to retain the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and loss of rent?
3. Is the landlord entitled to retain the security deposit?

### Background and Evidence

I was presented with undisputed evidence as follows. The tenancy commenced March 11, 2011 and the tenant paid a \$375.00 security deposit. The tenant is required to pay rent of \$563.00 on the 1<sup>st</sup> day of every month. The tenant's rent cheque for April 2011 was returned NSF. The tenant also failed to pay rent for May 2011 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door on May 4, 2011. The tenant did not pay the outstanding rent or dispute the Notice. The tenant continues to reside in the rental unit and has not paid any monies for June or July 2011.

In making this application the landlord is seeking to recover unpaid rent and loss of rent for the months of April through July 2011. During the hearing the landlord requested the monetary claim be amended to include NSF and late fees.

The tenant submitted that he sent the landlord a letter and the parties reached an agreement for the tenant to satisfy the rental arrears and continue with the tenancy. The landlord acknowledged receiving a letter from the tenant June 27, 2011 but denied an agreement was reached with the tenant to continue the tenancy.

Provided as documentary evidence for this hearing were copies of the tenancy agreement, Rental Incentive Agreement, the 10 Day notice, and registered mail receipt.

### Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the Notice was posted, it is deemed to be received three days later. Accordingly, the effective date of the Notice has been automatically changed to read May 17, 2011 under section 53 of the Act.

I find the disputed testimony to be insufficient to conclude the parties reached an agreement to re-instate the tenancy. However, it is clear the tenant did not pay the outstanding rent or dispute the Notice and I find the tenancy has ended. Since the tenant continues to occupy the rental unit the landlord is entitled to an Order of Possession. With this decision I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant. If the tenant does not comply with the Order of Possession the landlord may enforce it in The Supreme Court of British Columbia as an Order of that court.

I further find the landlord entitled to recover unpaid rent and loss of rent for the months of April through July 2011. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord the filing fee paid for this application.

I deny the landlord's request to amend the application for NSF and late fees as the tenant was not put on notice prior to this hearing that those amounts were being claimed by the landlord with this application.

In light of the above, the landlord is provided a Monetary Order in the net amount of \$1,927.00 calculated as follows:

|  |                 |
|--|-----------------|
| Unpaid rent and loss of rent (April – July 2011) | \$2,252.00      |
| Filing fee                                       | 50.00           |
| Less: security deposit                           | <u>(375.00)</u> |
| Monetary Order                                   | \$1,927.00      |

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,927.00 to serve upon the tenant.

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 27, 2011.

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Residential Tenancy Branch