



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNSD, 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, to retain all or part of the security deposit, 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 at 4:25 p.m. on July 29, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were personally given to the tenant at the rental unit, with an assistant manager present as a witness.

These documents are deemed to have been served on the day of personal delivery, in accordance with section 89 of the Act; however the Tenant did not appear at the hearing.

### Preliminary Matters

The landlord stated that the tenant has paid the rent due for July and August, 2011, and that the landlord wished to proceed with a request for an Order of possession and filing fee costs.

### Issue(s) to be Decided

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

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on September 1, 2007; a copy of the tenancy agreement was submitted as evidence. The rent is due on the first day of each month; copies of

Notices of rent increase were submitted indicating rent is currently \$1,530.00 per month. A deposit in the sum of \$702.50 was paid on August 7, 2007.

The landlord stated that on July 7, 2011, at approximately 4 p.m., with another manager present as a witness, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of July 19, 2011, was served by posting to the tenant's door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,530.00 within five days after the tenant is assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

On August 11, 2011, the tenant paid July rent owed and on August 24, 2011, the tenant paid August rent owed. On both occasions the tenant was provided with a receipt for use and occupancy only.

### 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 tenant received the Notice to End Tenancy on July 10, 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 tenant is deemed to have received this Notice on July 10, 2011, I find that the earliest effective date of the Notice is July 20, 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 July 20, 2011.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on July 20, 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 tenant accepted that the tenancy has ended. The tenant did pay the rent due, but failed to pay the rent within five days of July 10, 2011. On this

basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

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

The landlord is currently holding a deposit, plus interest in the sum of \$717.35. The deposit will be retained and disbursed as required by the Act; less the \$50.00 deposit; leaving a balance, to date, in the sum of \$657.50 plus interest in the sum of \$14.85.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, 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 \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security deposit in the sum of \$50.00.

Dated: August 30, 2011.

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Residential Tenancy Branch