



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, OPC, MNR, 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 and Cause, a monetary Order for unpaid rent, compensation for damage or loss and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The landlord confirmed they were seeking a monetary Order for unpaid rent and not damages.

Testimony was not required in relation to the 1 month Notice ending tenancy for cause, as the 10 day Notice ending tenancy was considered and eliminated the need to review the initial 1 month Notice that had been issued to the tenant.

### Issue(s) to be Decided

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

Is the landlord entitled to a monetary Order?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The parties agreed that the tenancy commenced on June 1, 2011; rent is \$800.00 per month due on the first day of each month. A security deposit in the sum of \$400.00 and

pet deposit of \$100.00 were paid. A copy of the signed tenancy agreement was supplied as evidence.

The tenant confirmed receipt of a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of August 15, 2011, that was served by posting to the tenant's door on August 2, 2011.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$800.00 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 was 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.

The tenant stated he did not pay his rent as he was told by a Residential Tenancy Branch (RTB) staff member that he should wait until this hearing and the outcome of the 1 month Notice ending tenancy that was issued on July 28, 2011. The tenant had not disputed either of the Notices issued to him.

The tenant confirmed that August, 2011, rent has yet to be paid.

### 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 August 5, 2011. Receipt was also confirmed by the tenant.

Based on the testimony of both parties and acknowledgment of the tenant, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on August 25, 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 ended on the effective date of the 10 day Notice. On this basis I will grant the landlord an Order of Possession that is effective 2 days after the Order is served to the tenant.

I explained to the tenant that he must pay rent when it is due, no matter what disputes are taking place; unless he has reason as provided by the Act or an Order allowing him to cease rent payment.

Even if I had considered the 1 month Notice ending tenancy for cause issued on July 28, 2011; the Act would determine that the tenancy should end, as the tenant did not dispute that Notice.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$800.00 for August, 2011, and that the landlord is entitled to compensation in that amount.

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.

### 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 \$850.00, which is comprised of unpaid August, 2011 rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$850.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated: August 31, 2011.

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