



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNSD, MNDC, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the landlord entitled to an order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of a basement suite. Pursuant to a written agreement, the tenancy started on May 15<sup>th</sup>, 2011. The rent was \$760.00 and the tenant paid a security deposit of \$380.00.

The landlord testified that the tenant owes \$260.00 for rent in July 2011, and the full rent for August 2011. He stated that the tenant took issue with deficiencies in the suite; however the tenant has not specified to him exactly what they were.

In his documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy which he served on the tenant on July 6<sup>th</sup>, 2011 by posting the notice on the tenant's door.

The tenant testified that he had a discussion with the landlord concerning unspecified repairs, and that the landlord agreed that he would not have to pay full rent until these repairs were addressed. The landlord argued that he never entered into any such agreement.

During the hearing, an opportunity to resolve this matter informally could not be achieved between the parties.

### Analysis

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. On that basis the landlord is entitled to an Order of Possession.

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. If the tenant has concerns with the tenancy, a remedy is to seek assistance from the Residential Tenancy Branch, or to file for dispute resolution if the landlord fails to address the issues.

The tenant was not entitled to withhold rent and I find the landlord entitled to a monetary order as claimed.

### Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. This Order must be served on the tenant, and if necessary may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$1020.00. I authorize the landlord to retain the tenant's \$380.00 security deposit for a balance owing of \$640.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$690.00.

This Order may be registered in the Small Claims Court 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: August 09, 2011.

---

Residential Tenancy Branch