



# 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 originally scheduled to be heard June 30, 2011 to deal with the landlord's application for an Order of Possession and Monetary Order for unpaid rent and authority to retain the security deposit. I heard the landlord's agent sent the tenant notice of the hearing by registered mail and I was provided a registered mail tracking number as proof of service. Due to a postal strike Canada Post did not make a first attempt to deliver the registered mail until June 28, 2011. I determined it necessary to adjourn the hearing in order to provide the tenant the opportunity to receive the hearing documents.

I also noted that the landlord was seeking to recover several months of unpaid rent. The landlord's agent was uncertain as to whether the tenant was still residing in the rental unit. I ordered the landlord to determine whether anybody was residing in the rental unit before the reconvened hearing. Notices of Adjourned Hearing were sent to each of the parties by the Residential Tenancy Branch via regular mail.

At the reconvened hearing of August 2, 2011 the tenant did not appear. The landlord's agent testified that a Notice of Entry was posted on the rental unit door on July 4, 2011 and on July 6, 2011 the agent entered the unit. In the unit, the landlord's agent found a note from somebody who has been access to the unit by the tenant. The note indicated the tenant was out of the country.

I determined the tenant has been sufficiently served with notification of the landlord's application and notice of this hearing in a manner that complies with the Act and I proceeded to hear from the landlord's agent without the tenant present.

### Issue(s) to be Decided

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

### Background and Evidence

I was provided a copy of a written tenancy agreement signed April 28, 2008 that reflects the following information:

- The tenancy commenced on May 1, 2008 for a one year fixed term and then converted to a month to month tenancy;
- The rent was \$2,200.00 payable on the 1<sup>st</sup> day of every month;
- No amount is indicated in the space provided for a security deposit or pet deposit.
- There is no provision for payment of late fees.

In making this application the landlord is seeking to recover unpaid rent of \$17,500.00 for rent “due on May 31, 2011.”

The landlord’s agent testified that the rent was raised to \$2,500.00 pursuant to an email exchange between the landlord and tenant. The tenant paid rent for October 2010 but has not paid anything for November 2010 onwards. The landlord’s agent did not know whether a security deposit was paid by the tenant.

I heard that the landlord’s agent posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant’s door on June 1, 2011. The Notice indicates that \$17,500.00 was outstanding as of May 31, 2011. Nothing was paid by the tenant after the Notice was posted and the tenant did not dispute the Notice.

The landlord provided a written submission and several emails written in Chinese as evidence for this proceeding. One email was translated into English by the landlord. The translated email is dated February 26, 2011 and indicates the tenant would move before March 30 and that he would pay the rent before March 30, 2011. The email also indicates the landlord may retain the “original deposit” as a late fee.

### 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.

I accept the landlord's agent's testimony that he personally posted the 10 Day Notice on the tenant's door on June 1, 2011. Accordingly, the effective vacancy date is changed to read June 14, 2011 pursuant to section 53 of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on June 14, 2011 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is 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.

With respect to the landlord's monetary claim I find as follows. The landlord indicated in her written submission that she increased the rent to \$2,500.00 for the second year of tenancy. The landlord's agent testified that the rent increase was done via email. I find, based upon the evidence before me, that the rent was increased in a manner that does not comply with Part 3 of the Act. Part 3 of the Act provides that all rent increases must be done using an approved form ("Notice of Rent Increase") and the Notice of Rent Increase must be given three months in advance and served in a manner that complies with section 88 of the Act. Further, the amount of the increase exceeds the regulated increase (3.7% in 2009). Email exchanges do not comply with the requirements of the Act. Therefore, I find the rent legally payable by the tenant remained at \$2,200.00 per month.

Since the tenant was paying \$300.00 over the rent legally payable for the months of May 2009 through October 2010 I find the tenant overpaid rent in the amount of \$5,400.00 and the tenant was entitled to recover the overpaid rent.

In light of the above, I find the landlord has established an entitlement to unpaid rent of \$2,200.00 per month for the months of November 2010 through May 2011 in the amount of \$13,200.00 less the overpaid rent of \$5,400.00 for a balance of \$7,800.00. The landlord is at liberty to make a subsequent application for loss of rent incurred for June 2011 onwards.

I am unable to determine the amount of the security deposit paid by the tenant based upon the evidence provided to me although it would appear from the translated email that a deposit was paid. The landlord is not entitled to "late fees" under the tenancy agreement. Therefore, I authorize the landlord to retain the deposit paid by the tenant in partial satisfaction of Monetary Order provided to the landlord with this decision.

I award the landlord the filing fee paid for this application and provide the landlord a Monetary Order calculated as follows:

Unpaid rent – November 2010 to May 2011	\$ 13,200.00
Less: overpaid rent May 2009 to October 2010	(5,400.00)
Filing fee	<u>100.00</u>
Monetary Order	\$ 7,900.00

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. The landlord has been provided a Monetary Order for unpaid rent up to May 2011 and the filing fee in the amount of \$7,900.00. The landlord is authorized to retain the deposit paid by the tenant in partial satisfaction of the Monetary Order.

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 02, 2011.

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Residential Tenancy Branch