



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR OPR FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 5, 2011. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

### Background and Evidence

This tenancy started in May, 2010 as a month to month tenancy. Rent is \$1,200.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$600.00 in May, 2010.

The Landlord said that the Tenant have unpaid rent from months prior to July, 2011 of \$1,140.00 and the Tenant did not paid the rent of \$1,200.00 for August, 2011 when it was due and as a result, on August 4, 2011 he personally delivered a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 4, 2010 to the Tenant. The Landlord said the Tenant has unpaid rent for September, 2011 of \$1,200.00 as well.

The Landlord further indicated that the Tenant is living at the rental unit and the Landlord requested an Order of Possession for September 30, 2011 to allow the Tenant some time to move out of the rental unit.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

The Tenant's representative said they agree with the amount of rent the Landlord says they have not paid. The Tenant's representative also agreed to be moved out of the rental unit by September 30, 2011. She said they have had some difficulties over the last few months and she was sorry for the trouble.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day they are personally served or in this case on August 5, 2011. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 10, 2011.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(b) of the Act that the Landlord is entitled to an Order of Possession to take effect September 30, 2011.

I also find that the Landlord is entitled to recover unpaid rent up to July, 2011 in the amount of \$1,140.00 and the August, 2011 rent, in the amount of \$1,200.00. I further find that the Landlord is entitled to recover the rental income for September, 2011 in the amount of \$1,200.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,340.00	
	September rent:	\$1,200.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$3,590.00
Less:	Security Deposit	\$ 600.00	
	Subtotal:		\$ 600.00
	Balance Owing		\$ 2,990.00

Conclusion

An Order of Possession effective September 30, 2011 and a Monetary Order in the amount of \$ 2,990.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

---

Residential Tenancy Branch