



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order, authority to retain the tenant's security deposit, and to recover the filing fee.

The parties appeared, provided affirmed testimony and written evidence, and were given an opportunity to make submissions to me and respond each to the other

### Issue(s) to be Decided

Has the tenant breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the landlord to an Order of Possession and monetary relief?

### Background and Evidence

The landlord testified that this month to month tenancy began on December 15, 2010, monthly rent is \$700.00, and a security deposit of \$350.00 was paid by the tenant at the start of the tenancy.

The landlord gave affirmed testimony and supplied evidence that on September 2, 2011, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") listing unpaid rent of \$700.00 due on September 1, 2011, by personal delivery. The effective vacancy date listed on the Notice was September 12, 2011.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

I have no evidence before me that the tenant applied to dispute the Notice. The landlord provided evidence and gave affirmed testimony that the tenant made a payment of \$100.00 since issuance of the Notice and currently owes unpaid rent of \$1,300.00 through the date of the hearing.

The tenant confirmed that she owed rent and has not paid the full amount; however the tenant disputed the date rent was owed.

I note that the tenancy agreement indicated that rent was owed on the 1<sup>st</sup> day of the month, as stated by the landlord.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

After the parties agreed to a move out date during the hearing, I find that the landlord is entitled to an **order of possession** effective at **1:00 p.m. on November 1, 2011**.

I am enclosing an order of possession with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Supreme Court of British Columbia should the tenant fail to comply with this order of possession.

I find that the landlord has established a total monetary claim of **\$1,350.00** comprised of outstanding rent for September and October of **\$1,300.00** and the **\$50.00** filing fee paid by the landlord for this application.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of **\$350.00** in partial satisfaction of the claim and I grant the landlord a monetary order under authority of section 67 of the Act for the balance due of **\$1,000.00**.

I am enclosing a monetary order for **\$1,000.00** with the landlord's Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this monetary order.

### Conclusion

The landlord is granted an Order of Possession, may keep the tenant's security deposit in partial satisfaction of the claim and is granted a monetary order for **\$1,000.00**.

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: October 26, 2011.

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Residential Tenancy Branch