



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord company and the tenant attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All evidence and testimony provided have been reviewed and are considered in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this fixed-term tenancy began on June 1, 2010 and expired on May 31, 2011. The tenant still resides in the rental unit. Rent in the amount of \$1,250.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$625.00, and no pet damage deposit was collected.

The landlord further testified that Clause 3 in the Tenancy Agreement states that at the end of the fixed term the tenant must move out. The tenant did not move out and the

landlord was prepared to allow the tenancy to continue as long as rent was paid. However, the rent was not paid in full; the tenant paid the landlord \$1,000.00 for June, 2011 and has paid no rent since. The tenant is now in arrears \$250.00 for the month of June, 2011 and \$1,250.00 for each of the months of July, August, September and now October, 2011.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing. The notice is dated July 6, 2011 and states that the tenant failed to pay rent in the amount of \$1,500.00 that was due on June 1, 2011 and July 1, 2011. The notice contains an expected date of vacancy of July 16, 2011. The landlord's agent testified that the notice was served on the tenant by posting it to the door of the rental unit on July 6, 2011 by another agent of the landlord, which was witnessed by this agent of the landlord.

The tenant has not paid the outstanding rent and is further in arrears now than when the notice was issued. The landlord requests an Order of Possession, an order permitting the landlord to keep the security deposit in partial satisfaction of the rental arrears, and a monetary order in the amount of \$4,675.00, which includes the fee for filing this application.

The tenant testified that the testimony of the landlord's agent is correct. The tenant is no longer employed and not able to pay the rent.

The tenant further testified to other issues in the tenancy, but there is no application before me by the tenant. The tenant agrees that rent has not been paid.

### Analysis

The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is due, the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once served, the tenant must pay the rent within 5 days or apply for dispute resolution disputing the notice within that 5 day period. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which is 10 days from the date the tenant receives the notice.

In this case, I find that the landlord's agents posted the notice to the door of the rental unit on July 6, 2011. The *Act* also states that a document served by that method is deemed to be served 3 days after posting it. I find that it was deemed to have been served on July 9, 2011. The tenant then had until July 14, 2011 to dispute the notice or pay the rent in full. The tenant did neither, and therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on July 19, 2011, not July 16, 2011.

as stated in the notice. However, Section 53 of the *Residential Tenancy Act* also states that incorrect dates contained in a notice to end tenancy are automatically changed to the nearest date that complies with the *Act*. I find that section of the *Act* applies, and the effective date of the notice is July 19, 2011.

In the circumstances, I find that the landlord is entitled to an Order of Possession.

I further find that the landlord is entitled to a monetary order for unpaid rent for the months of June through September, 2011. The landlord may be able to re-rent the unit for at least a portion of the month of October, 2011, and therefore, I find that the landlord is entitled to recover half a month's rent for October from the tenant.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. The tenant must be served with the Order of Possession. If the tenant is served with the order and fails to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I further order the landlord to keep the security deposit in the amount of \$625.00 and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$4,050.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: October 04, 2011.

---

Residential Tenancy Branch