



# 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.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, despite being served personally with the Landlord's Application for Dispute Resolution and notice of hearing documents on September 16, 2011, the tenant did not attend.

All evidence and the testimony provided by the landlord 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 the tenant was personally served with the Landlord's Application for Dispute Resolution, evidence, and notice of hearing on September 16, 2011, and obtained a written acknowledgement of service from the tenant. The landlord also testified that the acknowledgement was provided to the Residential Tenancy

Branch by way of facsimile, however, that document was not received by me prior to the hearing.

The landlord also testified that this fixed-term tenancy began on March 1, 2011 and expires on February 28, 2012. The tenant still resides in the rental unit. Rent in the amount of \$850.00 per month is payable in advance on the 1<sup>st</sup> day of each month. On February 19, 2011, the landlord collected a security deposit from the tenant in the amount of \$425.00 as well as a pet damage deposit in the amount of \$425.00. A copy of the Tenancy Agreement was provided in advance of the hearing which was signed by the landlord and the tenant on February 19, 2011. The Tenancy Agreement also provides for a late fee of \$25.00 for late payments of rent and \$37.50 for cheques returned for insufficient funds.

The landlord further testified that the tenant failed to pay rent when it was due for the month of September, 2011. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on September 2, 2011. A copy of the notice was provided in advance of the hearing; it is dated September 2, 2011, states that the tenant failed to pay rent in the amount of \$850.00 that was due on September 1, 2011, plus a late fee in the amount of \$25.00, and contains an effective date of vacancy of September 12, 2011.

The landlord further testified that the tenant has not paid rent for the month of October, 2011, and the landlord claims 2 month's rent from the tenant as well as a \$25.00 late fee for each of those months.

### Analysis

I accept the testimony of the landlord that the tenant was personally served with the Landlord's Application for Dispute Resolution and notice of hearing documents on September 16, 2011, and I find that service upon the tenant has been effected in accordance with the *Residential Tenancy Act*.

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 notice to end the tenancy. The tenant then has 5 days to dispute the notice or pay the rent in full. If the rent is paid in full within that 5 day period, the notice is of no effect. If the tenant does not pay the rent and does not dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move from the rental unit by that date.

In this case, I find that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 2, 2011 by posting it to the door of the rental unit. The *Act* also specifies that a document served in that manner is deemed to have been served 3 days after posting it. Therefore, I find that the tenant is deemed to have been served on September 5, 2011. The tenant did not dispute the notice and did not pay the rent in full by September 10, 2011. Under the *Act*, the effective date of the notice ought to read September 15, 2011, not September 12, 2011. However, Section 53 of the *Act* provides that incorrect dates on a notice to end a tenancy are automatically changed to the earliest date that complies with the *Act*, which I find is September 15, 2011.

I find that the landlord is entitled to an Order of Possession for unpaid rent.

With respect to the monetary order, I find that the tenant is in arrears of rent the sum of \$1,700.00 for the months of September and October, 2011 and the landlord is entitled to claim \$50.00 for late fees for those months.

With respect to the security deposit and pet damage deposit, the *Act* states that a landlord may only claim against a pet damage deposit for damages caused by a pet. However, Section 72(2) of the *Act* states as follows:

**72 (2)** If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
- (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

In the circumstances, I find that the landlord is entitled to keep all of the pet damage deposit and security deposit in partial satisfaction of the claim for unpaid rent.

The landlord is also entitled to recover the \$50.00 filing fee from the tenant 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. 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 \$425.00 and the pet damage deposit in the amount of \$425.00, and I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$950.00. 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 07, 2011.

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Residential Tenancy Branch