



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, MNSD, MNR, FF, O

### 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 breach of an agreement with the landlord; for a monetary order for unpaid rent or utilities; 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 attended the conference call hearing, provided affirmed testimony as well as evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on October 1, 2011, the tenant did not attend. The landlord

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for breach of an agreement?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to keep the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on January 1, 2011, and the tenant still resides in the rental unit. Rent in the amount of \$900.00 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 \$450.00, and no pet damage deposit was collected.

The landlord's agent further testified that the tenant did not pay rent in full for the month of August, 2011, leaving a balance outstanding of \$300.00. The tenant further failed to pay any rent for the months of September or October, 2011.

The landlord's agent also testified that the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 14, 2011, a copy of which was provided in advance of the hearing. The landlord also explained that the Landlord's Application for Dispute Resolution completed by the landlord on-line states that the tenant was served by placing it in the mail box, however that is an error, and the tenant actually opened the door during the process, and was personally served.

The notice is dated September 14, 2011 and contains an expected date of vacancy of September 24, 2011. The notice also states that the tenant has failed to pay rent in the amount of \$1,220.00, and the landlord's agent testified that the amount consists of \$300.00 for August rent, \$900.00 for September rent, and a \$20.00 late fee which is provided for in the tenancy agreement. The landlord is not claiming any late fees at this hearing, but requests an Order of Possession and a monetary order for unpaid rent for August, September and October, 2011 in the amount of \$2,100.00.

The landlord's agent also testified that a number of people and vehicles have been seen at the rental unit, and the landlord's agent is not certain how many people are actually residing in the rental unit. Therefore, the landlord has applied for an Order of Possession for all occupants.

### Analysis

The *Residential Tenancy Act* states that if a tenant fails to pay rent in full when it is due, the landlord may, on any day after the date rent is payable, issue a notice to end tenancy for unpaid rent or utilities. Once served, the tenant has 5 days to pay the rent in full or dispute the notice by filing an application for dispute resolution at the Residential Tenancy Branch. 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 must be 10 days after the date the tenant was served with the notice, and the tenant must move out by that date.

In this case, the landlord's agent testified that the tenant was personally served on September 14, 2011 with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant has not disputed the notice and has not paid the rent in full within the 5 days provided for in the *Act*. The tenant further failed to pay rent for the month of October, 2011, and I find that the landlord is entitled to an Order of Possession and a monetary order for the unpaid rent. The landlord is also entitled to keep the security deposit in partial satisfaction of the claim, and is 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. This Order may be filed in the Supreme Court of British Columbia for enforcement if the tenant does not obey the Order.

I further order the landlord to keep the security deposit in the amount of \$450.00 and I grant a monetary order in favour in the landlord for the balance due of \$1,700.00. 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 26, 2011.

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Residential Tenancy Branch