



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord, E.D. provided affirmed testimony that on October 15, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were hand-delivered to the tenant at 9 a.m., at the rental unit address.

These documents are deemed to have been served in accordance with section 89 of the Act.

### Preliminary Matters

The hearing commenced at 1:30 p.m., at which time I determined that the tenant had been served with Notice of the hearing and the hearing.

At 1:47 G.P. entered the conference call hearing and identified himself as a friend of the tenant. G.P. stated that the tenant was on her way to the telephone but that she would require another 20 minutes, as she was suffering from kidney stones. G.P. stated that he was also instructed by the tenant to do whatever he could to represent her at the hearing. G.P. was then affirmed and gave testimony as agent for the tenant.

The application was amended to include unpaid November, 2011, rent owed.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on July 1, 2011; rent is \$900.00 per month, due on the first day of each month. The landlord stated that the tenant has not paid rent since she moved into the unit.

The tenant's agent, G.P., stated that he was not sure a tenancy had been created; that his son had moved into the unit and was to complete repairs in lieu of rent, but that he vacated in September at which point E.O. moved into the unit.

The landlord testified that they had a signed tenancy agreement. I requested a copy of that agreement, a copy of which the landlord stated had been given to the tenant. The landlord submitted a copy of a shelter information sheet issue on May 18, 2011, in the tenant's name; acknowledging that the document did not qualify as a tenancy agreement. The document was altered in the section that indicted the client's share of rent owed, the number of adults and landlord's address. The original amount of rent that had been included on the form is illegible. The shelter information included a start date of July 1, 2011.

The landlord's agents both testified that on October 4, 2011, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of October 14, 2011, was personally served to the tenant at 4 p.m., at the rental unit.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$3,600.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

### Analysis

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on October 14, 2011, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights, therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy ended on October 14, 2011. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served.

I have considered the shelter information form that was submitted by the landlord; this is not a written tenancy agreement. As a record of the details of the tenancy, the form poses several problems in that it has been altered in the section that referenced the number of adults that would reside in the home and the amount of rent owed has been altered. The client name indicated only E.O.; it is not clear if the landlord created co-tenancies with other tenants or if E.O. was a tenant in common.

I have considered the testimony of G. P. who stated his son had been the tenant until September, 2011, when E.O. moved into the unit. However, the shelter information form does indicate that E.O. was intending to rent effective July 1, 2011.

In the absence of the original shelter information form, I find that the landlord has failed to establish the amount of rent owed. As the only apparent record of the tenancy is a shelter information form that has been altered, I am not confident that the tenant owed \$900.00 per month rent; I am unable to determine if the tenant had a co-tenant or was a tenant sharing space with other individuals who had a tenancy with the landlord.

Therefore, in the absence of reliable information supplying information on the amount of rent owed, I dismiss the monetary claim with leave to reapply. At any future hearing the parties will be at liberty to supply the original shelter information form as evidence, which may assist in establishing any amount of rent that may be owed.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The monetary claim is dismissed with leave to reapply.

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: November 08, 2011.

---

Residential Tenancy Branch