



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**SS, OPR, MNR, MNSD, MNDC, MND, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, damage to the unit, damage or loss under the Act, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord Provided affirmed testimony that on October 20, 2011, copies of the Application for Dispute Resolution, evidence and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service.

The landlord was at the residence after October 20, 2011, and from outside could see the hearing package envelope on the floor of the kitchen. The mail goes to an outer mailbox; the tenant would have had to bring the mail inside the unit.

The landlord also applied requesting substitute service, however; I find these documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matters

The claim for cleaning costs was withdrawn as that portion of the claim was premature. The approximate utilities costs indicated on the application included a claim for \$32.81.

### Issue(s) to be Decided

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

Is the landlord entitled to a monetary Order for unpaid rent, utilities, damage or loss?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on October 1, 2008; rent was \$675.00 due on the first day of each month. A deposit in the sum of \$335.50 was paid. The tenancy agreement, submitted as evidence, required the tenant to pay utilities and water consumption costs.

The landlord has made the following claim:

October/November, 2011 rent	1350.00
BC Hydro July 9 – September 8, 2011	86.43
City of Surrey Water July 27 to November 30, 2011	159.18
Fire damage – repair costs	1,500.00
<b>TOTAL</b>	<b>3,146.28</b>

The landlord stated that on October 3, 2011, a Ten (10) Day Notice to End Tenancy for non-payment of rent, which had an effective date of October 16, 2011, was served by posting to the tenant's door at 8:30 p.m., with a friend present as a witness.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$675.00 October, rent and \$104.29 utilities costs 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 is 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.

The landlord believes the tenant may now have vacated; he gave her a note dated October 2, 2011, indicating he would move out on November 5, 2011. The note was supplied as evidence; the tenant requested return of his deposit plus 1 month's compensation and moving costs.

The landlord stated that she always sent the utility costs to the tenant via text message and that he would then pay. The tenant failed to pay the most recent utility bill notice that were sent to him. The last 2 water bills were adjusted to 30% of the total, as a 2<sup>nd</sup> occupant lived in the building. Copies of the bills for the period of time claimed were supplied as evidence.

The landlord stated that on November 23, 2008, the tenant had an accident with his Bar B Q; it exploded, resulting in the tenant going to hospital. The explosion caused the side of the house to catch fire. The landlord submitted several photographs that were meant to show damage to the aluminum siding; the photos were difficult to discern. The landlord supplied a copy of an October 1, 2011, estimate in the sum of \$1,500.00 for repair to the side of the house.

The landlord stated that the tenant does construction work and had promised to fix the wall, but that he failed to do so. The landlord's insurance deductible is \$5,000.00.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on October 6, 2011.

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 16, 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 the effective date of the Notice; October 16, 2011. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$675.00 for October, that the landlord has suffered a loss of November, 2011, rent revenue in the sum of \$675.00 and that the landlord is entitled to compensation in that amount.

Based upon the tenancy agreement which included payment of utilities by the tenant and the evidence before me I find that the landlord is entitled to water, hydro and gas costs as claimed.

Based on the testimony of the landlord, I find that the tenant caused damage to the side of the house when his Bar B Q exploded and that the resulting damage to the house was not the result of normal wear and tear. The tenant failed to make the repair to the exterior wall; therefore, based on the landlord's estimate for repair submitted as evidence, I find that the landlord is entitled to the cost of repair.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
Fortis gas September 8 – October 7, 2011	50.67	50.67
BC Hydro July 9 – September 8, 2011	86.43	86.43
City of Surrey Water July 27 to November 30, 2011	159.18	159.18
Fire damage – repair costs	1500.00	1500.00

TOTAL	3146.28	3146.28
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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.

I find that the landlord is entitled to retain the tenant's security deposit plus interest of .84 cents, in the amount of \$336.34, in partial satisfaction of the monetary claim.

#### 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.

I find that the landlord has established a monetary claim, in the amount of \$3,196.28, which is comprised of unpaid rent, damage and damage or loss, plus \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$336.34, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,859.94. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court 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: November 10, 2011.

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Residential Tenancy Branch