



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNSD, CNR, FF**

### Introduction

This was a cross-application hearing.

The tenant applied to cancel a Notice ending tenancy for unpaid rent.

This hearing was also 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, 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 confirmed receipt of the tenant's application.

The landlord provided affirmed stated that on November 19, 2011, copies of the Application for Dispute Resolution 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.

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.

As the tenant failed to attend the hearing in support of his application; the tenant's application was dismissed.

### 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 November, 2011 rent?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The landlord purchased the property in October, 2011. The tenant had been living in the home for approximately 1 year. A deposit in the sum of \$337.50 was transferred to the landlord at the time of sale. Rent was \$675.00 per month due on the first day of each month.

On November 7, 2011, the tenant disputed the Ten (10) Day Notice to End Tenancy for non-payment of rent, which was issued on November 5, 2011 and had an effective date of November 1, 2011.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$675.00 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.

The landlord testified that the tenant did not leave any money in the mailbox, as indicated in the tenant's written submission. The landlord believes the tenant is in the process of vacating the unit.

The tenant did not pay November, 2011, rent owed.

### Analysis

I find that by November 7, 2011, the date the tenant applied to dispute the Notice, he had received a copy.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was November 17, 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 November 17, 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. The tenant applied to dispute the Notice and failed to attend this hearing in support of his application, which has been dismissed. Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. 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 November, 2011, and that the landlord is entitled to compensation in that amount.

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 in the amount of \$337.50, in partial satisfaction of the monetary claim.

### Conclusion

The landlord has been granted an Order of Possession that is effective two 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 \$725.00, which is comprised of unpaid November, 2011, rent and \$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 in the amount of \$337.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$387.50. 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 29, 2011.

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Residential Tenancy Branch