



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNSD, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent and damage to the rental unit; to keep the security deposit; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenant by way of registered mail sent on October 20<sup>th</sup>, 2011, and provided a Canada Post tracking number. The tenant did not participate and the hearing proceeded in the tenant's absence.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of a two bedroom townhouse. Pursuant to a written agreement, the fixed term tenancy started on March 1<sup>st</sup>, 2011 and is to end on December 31<sup>st</sup>, 2011. The rent is \$925.00 per month and the tenant paid a security deposit of \$462.50.

The landlord testified that he spoke to the tenant on the date of this hearing, and that she stated that she would give him notice that she would leave by the end of November

2011. He stated that he agreed to a payment plan that the tenant proposed for her arrears.

The landlord provided an updated claim as follows:

- Outstanding filing and NSF fees:       \$ 80.00
- Unpaid rent for October 2011:       \$ 925.00
- Unpaid rent for November 2011:       \$ 925.00
- Sub-total:                               \$1930.00

### Analysis

I accept the landlord's undisputed testimony that he served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. The landlord provided a copy of the 10 Day Notice to End Tenancy which he served on the tenant on October 4<sup>th</sup>, 2011. I find that the notice is valid and on that basis the landlord is entitled to an order of possession.

Based on the evidence I accept that the tenant continues to reside at the rental unit and that she has not paid rent for October and November 2011. Therefore the landlord is entitled to a monetary order as claimed.

### Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I note that the landlord's \$80.00 claim for unpaid fees include \$50.00 for which he already received a monetary order in a previous Residential Tenancy Branch decision and order dated May 27th, 2011. Since the \$50.00 filing fee was already determined, I

cannot grant a further monetary order for that claim; therefore I deduct that amount from the \$80.00 claim and I grant the landlord \$30.00 for the unpaid NSF bank fee.

The landlord established a claim of \$1880.00. I authorize the landlord to retain the tenant's \$462.50 security deposit for a balance owing of \$1417.50. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$1467.50. This Order may be registered in the 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 14, 2011.

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Residential Tenancy Branch