



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the Hearing, the Parties agreed that the one person (“KE”) named as a Responding Party in the application is not a Party to the tenancy agreement. As KE has no rights or obligations under the Act, regulation or tenancy agreement, this person cannot be considered as a Party to the dispute, and I therefore dismiss the application in relation to KE.

### Issue(s) to be Decided

Is the Notice to End tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy began on August 1, 2010 for a fixed term with an effective end date of August 1, 2012. Rent in the amount of \$1,000.00 is payable in advance on the first day of each month. The Landlord states that at the outset of the tenancy, the Landlord employed the Tenant in exchange for the first month's rent and a \$500.00 security deposit. The Landlord states that the Tenant failed to pay rent for August, September, October and November 2011 rent. The Landlord states that the Tenant also failed to pay full rent for July 2011 and is \$200.00 in arrears for that month. The Landlord states that on September 15, 2011, he served the Tenant with a one month Notice to end tenancy for cause, that cause being repeated late payments of rent, with an effective date of October 14, 2011. The Landlord states that the Notice was posted on the door of the unit on September 15, 2011. The Tenant states that the Landlord did not post the Notice on the door but handed it instead to his two sons, one aged 17 and the other 18 years.

The Tenant states that he is not disputing the end of the tenancy and intends to move into another unit for December 1, 2011. The Tenant states that during the first year of the tenancy, the Tenant worked for the Landlord and that in May 2011, the Tenant stopped working for the Landlord as the Landlord owed the Tenant \$5,000.00 for wages. The Tenant states further that the unit was once a grow-operation and that the unit is now full of mould.

### Analysis

Section 47 of the Act provides that where a Landlord gives a Notice to End Tenancy for cause and the tenant does not make an application for Dispute Resolution within 10 days after the date the tenant receives the notice, 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.

Although the Tenant disputes the method of service of the Notice, given that the Tenant appeared and was fully aware of the Notice, I find that the Notice was sufficiently served

on the Tenant and I find the Notice to be valid. Although the Tenant states that the Landlord owes monies for work done, the Tenant did not deny failing to pay the rent as it was due. Further, the Tenant is not disputing the end of the tenancy and has not filed an application to dispute the Notice. Given these facts, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and that the Landlord is entitled to an **Order of Possession**.

Based on the undisputed evidence of the Landlord that the Tenant did not pay the rent as it was due, I also find that the Landlord is entitled to **\$4,800.00** in unpaid rent. The Landlord is entitled to recovery of the **\$50.00** filing fee for a total monetary amount of \$4,850.00.

Although the Tenant did not pay money to the Landlord for the security deposit, given the undisputed evidence that the Tenant carried out work in kind for the value of the security deposit, I find that the Landlord still holds this amount as the Tenant's security deposit and that this amount may be set off the amount owing to the Landlord. Accordingly, setting off the security deposit plus interest in the amount of \$500.00 from the entitlement of \$4,850.00, leaves the amount of **\$4,350.00** owing by the Tenant to the Landlord.

### Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

**I order** that the Landlord retain the **deposit** and interest of \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$4,350.00**. If necessary, this order may be filed 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 16, 2011.

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Residential Tenancy Branch