



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** OPR, MNR, MNDC, MNSD and FF

### **Introduction**

This application was brought by the landlord on October 11, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served by posting on the tenant's door on September 9, 2011. The landlord also sought a Monetary Order for the unpaid rent/loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent/loss of rent, recovery of the filing fee and authorization to retain the security deposit in set off.

### **Background and Evidence**

This tenancy began on July 15, 2009. Rent was raised from \$903 per month to \$923 per month as of October 1, 2011 and the landlord holds a security deposit of \$437.50 paid on July 14, 2009.

During the hearing, the landlord gave evidence, that the Notice to End Tenancy of September 9, 2011 had been served after the tenant had a rent shortfall of \$82.16 for the August rent and had paid none of the rent due on September 1, 2011. When those amounts remained unpaid, and the tenant had paid no rent for October 2011, the landlord brought the present application. Subsequently, the landlord amended the application to add unpaid rent/loss of rent for November 2011.

The landlord also seeks late fees of \$25 for each of September, October and November of 2011 as per the Rental Agreement.

The tenant concurred with the landlord's claims for unpaid rent. She made explanation that she had believed the ministry had been paying the rent. She stated she has now found employment and proposed a three-part repayment schedule to the landlord.

Irrespective of whether that proposal remains open to negotiation, the landlord requested an Order of Possession to take effect two days from service of it on the tenant and a Monetary Order for the unpaid rent and loss of rent.

### **Analysis**

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenants may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was September 22, 2011.

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent/loss of rent, recovery of the \$50 filing fee for this proceeding authorization to retain the security deposit in set off against the balance owed.

However, I decline to award the late fees requested by the landlord as that claim was not expressly stated on the application form.

The monetary award is calculated as follows:

|                            |          |
|----------------------------|----------|
| August 2011 rent shortfall | \$ 82.16 |
|----------------------------|----------|

|  |                   |
|--|-------------------|
| October 2011 rent                                | 923.00            |
| November 2011 rent/loss of rent                  | 923.00            |
| Filing fee                                       | <u>50.00</u>      |
| Sub total  | \$2,881.16        |
| Less retained security deposit (No interest due) | <u>- 437.50</u>   |
| <b>TOTAL</b>                                     | <b>\$2,443.66</b> |

## Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlord is also issued with a Monetary Order for **\$2,443.66**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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 03, 2011.

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Residential Tenancy Branch