



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

<b><u>Dispute Codes</u></b>	Landlord:	OPL, MNR and FF
	Tenant:	MNDC, OLC and O

### **Introduction**

These applications were brought by both the landlord and the tenant.

By application of October 18, 2011, the landlord seeks an Order of Possession to give effect to a finding from a Dispute Resolution Hearing on September 29, 2011 in which the decision of October 12, 2011 upheld a Notice to End Tenancy for landlord use. The landlord also sought to recover the filing fee for this proceeding from the tenant.

In addition, the landlord noted that the tenant has paid no rent for November and asked if he could amend his application to request that November be counted as the free month's rent due to tenants who receive a Notice to End Tenancy for landlord use in lieu of October 2011 for which rent had been paid. I have exercised the discretion granted under section 64(3)(c) to amend the application accordingly.

By application of October 17, 2011, the tenant sought an award for damages totalling \$25,000, an Order that the landlord comply with the legislation and other matters.

Despite having made the application, the tenant did not attend the face-to-face hearing as stated in his email to the branch on November 13, 2011. Therefore, his application is dismissed without leave to reapply and the hearing proceeded on the landlord's application.

### **Issue(s) to be Decided**

This matter now requires a decision on whether the landlord is entitled to an Order of Possession, recovery of the filing fee and authorization to count the unpaid rent for November as the tenant's one-month free rent entitlement.

### Background and Evidence

The primary evidence in this matter has been thoroughly reviewed in the Decision issued on October 12, 2011 and need not be repeated herein. That hearing dealt with three applications by the tenant which included a request to set aside a Notice to End Tenancy for landlord use.

In her decision, the Dispute Resolution Officer found that the Notice to End Tenancy had been issued in good faith, upheld the notice and ordered that the tenancy ended on October 31, 2011.

During the present hearing, the landlord advised that the tenant has failed to honour the Notice and the order expressed in the decision of the Dispute Resolution Officer and requests an Order of Possession to take effect on the earliest possible date.

The landlord gave further evidence that as the tenant had shown no sign of vacating by the October 31<sup>st</sup> deadline, he had not yet returned the rent paid for October 2011. Therefore, he asked if he might treat November 2011 as the rent free month given that the tenant has been overholding for two weeks.

### Analysis

I find no lack of clarity or ambiguity in the Decision of October 12, 2011 which states in its conclusion that:

*“The tenant’s applications have been dismissed. The Notice to End Tenancy has been upheld and the tenancy shall end on October 31, 2011. The tenant is required to return vacant possession of the rental unit to the landlord no later than October 31, 2011.”*

Section 62(3) of the *Act* provides that, “The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act....”

Accordingly, and as further authorized under section 55 of the *Act*, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

As the present hearing takes place in mid-November, and given the time required for service and the tenant’s demonstrated reluctance to vacate, I find it most unlikely that

the landlord will have vacant possession and have the rental unit ready for occupancy in November. Therefore, I find that the landlord is entitled to recover his unpaid rent for the month by counting November 2011 as the rent free month provided to the tenant by section 51 of the *Act*, and the landlord is not required to return the rent for October 2011.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenant and, as empowered by section 72 of the *Act*, I hereby authorize and order that he may do so by retaining \$50 from the tenant's security deposit.

### 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.

The landlord is relieved of the obligation to return the rent for October 2011 and to count November 2011 as the rent-free month granted by section 51 of the *Act*.

The landlord may recover the \$50 filing fee for this proceeding by retain that amount from the tenant's security deposit.

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