



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC and FF

### Introduction

This application was brought by the landlord on August 17, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy dated July 11, 2011 and served by registered mail on August 19, 2011 and again in person on September 14, 2011. The landlord also sought a Monetary Order for the unpaid rent, two late fees and recovery of the filing fee for this proceeding. While the landlord did not check off the box for an Order of Possession on the application, I have amended it accordingly as the landlord has made the intention to end the tenancy clear to the tenant by the notice to end and acceptance two payments for “use and occupancy” only.

Despite having been served with the Notice of Hearing served by registered mail and in person, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

### Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent, late fees and filing fee.

### Background and Evidence

This tenancy began on August 1, 1993. Rent is \$374 per month and there is no security deposit.

During the hearing, the landlord’s agent gave evidence that the Notice to End Tenancy had been served after the tenant had a rent arrears accumulating from January 2011 when the tenant had an outstanding balance of \$220.

A copy of the tenant's ledger submitted by the landlord showed that the tenant paid no rent for March, May, June and August of 2011 although the arrears was reduced by a payment of \$575 made on July 15, 2011.

The landlord claims \$50 late fees for the latter two months, but that is reduced to \$25 for each month to conform with the maximum allowed by regulation.

The landlord stated that the tenant had made payments of \$375 on August 22, 2011 and November 14, 2011 and that she had been advised in writing that the payments were accepted for use and occupancy only and acceptance of them did not constitute reinstatement of the tenancy.

In the interim, the tenant remains in the rental unit and has paid no rent for September or October of 2011 and, as noted, the payment for November was paid late and accepted for use and occupancy only.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due irrespective of any grievances the tenants may have for which other remedies are available.

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 July 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, late fees and filing fee and authorization to retain the security deposit in set off against the balance owed, calculated as follows:

Accumulated rent arrears to August 2011 including late fee (\$25 x 2)	\$1,563.00
Rent for October 2011	374.00
Rent for November 2011	374.00
Filing fee	<u>50.00</u>
Sub total	\$2,735.00
Less payment made August 22, 2011	- 375.00
Les payment made November 14, 2011	- 375.00
<b>TOTAL</b>	<b>\$1,985.00</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.

The landlord is also issued with a Monetary Order for **\$1,985.00**, 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 16, 2011.

---

Residential Tenancy Branch