



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR and MNR

### Introduction

This application was brought by the landlord on November 4, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on October 13, 2011. The landlord also sought a Monetary Order for the unpaid rent.

This matter was originally address on November 8, 2011 as a direct request proceeding under section 55(4) of the *Act* on written submissions only, but was adjourned to the present participatory hearing as the rental agreement had omitted the rent due date.

Despite having been served with the Notice of Hearing for the present participatory hearing on November 8, 2011, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

### Issue(s) 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.

### Background and Evidence

This tenancy began on July 1, 2011. Rent is \$1,040 per month.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of October 13, 2011 had been served when the tenant had a rent shortfall of \$280 for the rent due on September 1, 2011 and had paid none of the \$1,040 due on October 1, 2011.

In the interim, those amounts remain unpaid and the tenant has not paid the rent due on November 1, 2011.

### 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 October 13, 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, calculated as follows:

Rent shortfall for September 2011	\$ 280.00
Rent for November 2011	1,040.00
<b>TOTAL</b>	<b>\$2,360.00</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 **\$2,360.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord is at liberty to make application for any further losses or damage as may be ascertain at the conclusion of the tenancy.

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 28, 2011.

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Residential Tenancy Branch