



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNSD, MNDC, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and damage or loss?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on July 1, 2010, rent is \$635.00 per month; a deposit in the sum of \$312.50 was paid at the start of the tenancy. A copy of the tenancy agreement was supplied as evidence; clause 10 requires payment of a \$25.00 late rent fee.

The building manager provided affirmed testimony stated that on November 3, 2011, a Ten (10) Day Notice to End Tenancy for non-payment of rent, which had an effective date of November 13, 2011, was served by posting to the tenant's door.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$735.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant paid \$500.00 on November 23, 2011 and a further \$260.00; receipts for use and occupancy were issued. The tenant currently owes \$50.00 for October rent and \$510.00 for December, 2011 rent; the tenant remains in the rental unit.

The landlord has claimed late rent payments for October, November and December, 2011, in the sum of \$75.00. The tenant paid the balance of October rent on the 4<sup>th</sup> of that month.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on November 6, 2011.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on November 6, 2011, I find that the earliest effective date of the Notice is November 16, 2011.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was November 16, 2011.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on November 16, 2011, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant did pay November rent owed, but did not do so within 5 days of November 6, 2011. Further, the landlord issued receipt for use and occupancy only, indicating that the tenancy was not being reinstated. In the circumstances before me I have no evidence that the tenant paid the rent within 5 days of disputed the Notice, therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

In the absence of evidence to the contrary, I find that the landlord did receive the balance of October rent owed on the 4<sup>th</sup> of that month. I find that the tenant paid \$760.00 for November and December rent owed; leaving a balance in the sum of \$510.00.

I find that the landlord is entitled to late rent payments for October and November, 2011, in the sum of \$50.00. I dismiss the claim for the December late payment fee, as the tenancy ended on the effective date of the Notice; November 16, 2011.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$312.50, in partial satisfaction of the monetary claim.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$610.00, which is comprised of unpaid rent, loss of rent revenue, late fees and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$312.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$297.50. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia 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: December 12, 2011.

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Residential Tenancy Branch