



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPR, and FF

### Introduction

This hearing was convened on the landlord's application of November 24, 2011 for an Order of Possession pursuant to a Notice to End Tenancy for cause served on November 13, 2011.

On December 5, 2011, the landlord submitted further evidence of having served the tenant with a Notice to End Tenancy for unpaid rent in person on December 2, 2011 and asked that his application be amended to include a request for an Order of Possession in support of the notice for unpaid rent.

I have exercised the discretion granted under section 64(3)(c) of the Act to permit the landlord to amend the application accordingly.

Despite having been served with the Notice of Hearing, 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 in support of either of the Notices to End Tenancy.

### Background and Evidence

This tenant began on November 1, 2011. Rent is \$550 per month plus 25 percent of utilities and the landlord holds a security deposit of \$250.

During the hearing, the landlord gave evidence that the Notice to End Tenancy for cause of November 13, 2011 had been issued after a number of disturbances in the rental unit including incidents involving police attendance.

In the interim, the landlord stated that the tenant had failed to pay the rent due on December 1, 2011 leading to the issuance of a Notice to End Tenancy for unpaid rent served in person on December 2, 2011. He stated that the rent remained unpaid at the time of the hearing on December 8, 2011.

### Analysis

Section 47(5) and (6) of the *Act* provides that a tenant may make an application to dispute a Notice to End Tenancy for cause within 10 days of receipt of the notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must vacate the rental unit by that date.

In the present matter the notice served on November 13, 2011 sets an end of tenancy date of December 15, 2011. However, such notice must give at least one full month's notice following the rent due date after the notice is given. In this matter, the effective date of the notice for cause would be December 31, 2011.

Section 46(4) and (5) of the *Act* grant a tenant receiving a Notice to End Tenancy for unpaid rent five days to either pay the rent or make application to contest the notice or be conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

As the tenant has not contested either notice and as the rent remained unpaid six days after service of the notice for unpaid rent, I find that the notice for unpaid rent takes precedence.

Therefore, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant and no sooner than 1 p.m. on December 12, 2011.

I further find that the landlord is entitled to a Monetary Order for the December rent in the amount of \$550.

As the application has succeeded on its merits, I find that the landlord is entitled to recover the filing fee for this proceeding.

As permitted under section 72 of the Act, I hereby authorize that the landlord may retain the tenant's security deposit in set off against the balance owed.

Thus, I find that the landlord is entitled to a Monetary Order calculated as follows:

December rent	\$550.00
Sub total	\$600.00
Less retained security deposit (No interest due)	- <u>250.00</u>
<b>TOTAL</b>	<b>\$350.00</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 and no sooner than 1 p.m. on December 12, 2011.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$350.00**, 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 ascertained 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: December 08, 2011.

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Residential Tenancy Branch