



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC and FF

This application was brought by the landlord on December 12, 2011 seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on November 30, 2011. The landlord also sought a Monetary Order for the unpaid rent and loss of rent for January. In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend his application to include a request for authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing served in person on December 13, 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 Monetary Order for the unpaid rent and authorization to retain the security deposit in set off.

### Background and Evidence

This tenancy began on September 15, 2011. Rent is \$1,500 per month and the landlord holds a security deposit of \$750 paid on September 15, 2011.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of November 30, 2011 had been served after the tenant had a rent shortfall of \$100 for the November rent which had been paid in instalments.

In the interim, the tenant has paid none of the \$1,500 rent due on December 1, 2011 and remains in the rental unit.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

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 tenant 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 would have been December 10, 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 for November and December 2011. However, the landlord's claim for loss of rent for January 2012 is dismissed with leave to reapply as I cannot be certain whether or in what amount there will be a loss of future rent.

I further find that the landlord is entitled to recover the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed. The monetary award is calculated as follows:

Rent shortfall for November 2011	\$ 100.00
Filing fee	<u>50.00</u>
Sub total	\$1,650.00
Less retained security deposit (No interest due)	<u>- 750.00</u>
<b>TOTAL</b>	<b>\$ 900.00</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.

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 **\$900.00**, 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 22, 2011.

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Residential Tenancy Branch