



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MT, CNR, RP, FF

### Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord, as identified above in the landlord's application for dispute resolution, applied for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The landlord identified the tenant as TLA, the name she used when she signed the Residential Tenancy Agreement, entered into written evidence by the landlord.

The tenant identified herself as TLB in her application for dispute resolution. She identified her landlord as the name outlined above and JP, the landlord's employee.

The tenant requested the following in her application for dispute resolution:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- a monetary order for compensation for \$800.00 in emergency repairs during this tenancy pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:10 a.m. in order to enable her to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the dispute resolution proceeding** The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Dispute Resolution Officer. The Dispute Resolution Officer may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

**In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply.**

The male landlord (the landlord) provided written evidence attesting to the landlord's posting of the 10 Day Notice on the tenant's door at 11:00 a.m. on November 3, 2011. The landlord also provided written evidence that the landlord sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on December 1, 2011. The landlord provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this mailing. I am satisfied that the landlord served these documents in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

This one-year fixed term tenancy commencing on October 1, 2011 was scheduled to end on September 30, 2012. Monthly rent is set at \$1,150.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$575.00 security deposit paid on September 20, 2011.

The landlord issued the 10 Day Notice when the tenant did not pay the \$1,150.00 in outstanding rent for November 2011. The landlord's representatives testified that the tenant paid \$430.00 on November 15, 2011, but has not paid anything else since the 10 Day Notice was issued. The landlord increased the amount of the requested monetary award from \$720.00 by \$1,150.00 to \$1,870.00 for unpaid rent for November and December 2011. I allowed the landlord to increase the amount of the requested monetary award.

Analysis - Order of Possession

The tenant failed to pay any portion of the November 2011 rent within five days of receiving the 10 Day Notice. Although the tenant applied for dispute resolution on November 25, 2011, this occurred well beyond the five day time limit for filing an application for dispute resolution regarding the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 16, 2011. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord

will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

#### Analysis – Monetary Award

Based on the landlord's undisputed evidence, I find that the landlord is entitled to a monetary award of \$720.00 for unpaid rent from November 2011 and \$1,150.00 for unpaid rent from December 2011.

I allow the landlord to retain the tenant's \$575.00 security deposit in partial satisfaction of the monetary award issued in this decision. Since the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application from the tenant.

#### Conclusion

I dismiss the tenant's application without leave to reapply.

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent and the filing fee for this application and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid November 2011 Rent	\$720.00
Unpaid December 2011 Rent	1,150.00
Less Security Deposit	-575.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$1,345.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 13, 2011

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Residential Tenancy Branch