



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNR, MNSD

### Introduction

This hearing was scheduled in response to the landlord's original application for an order of possession / and a monetary order as compensation for unpaid rent. Both parties attended the hearing and gave affirmed testimony. During the hearing the tenant agreed to amendment of the application to include the landlord's retention of the security deposit as an offset to any rent that may be found owing.

### Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on August 1, 2009. Monthly rent of \$650.00 is payable in advance on the 30<sup>th</sup> day of the month preceding the month for which rent is due. A security deposit of \$325.00 was collected.

The landlord issued a 1 month notice to end tenancy for cause dated November 8, 2011. The notice was served by way of posting on the tenant's door on that same date. A copy of the notice was submitted in evidence. Reasons shown on the notice for its issuance are as follows:

Tenant is repeatedly late paying rent

Evidence submitted by the landlord in support of the 1 month notice includes, but is not limited to, copies of 10 day notices to end tenancy for unpaid rent dated as follows:

September 8, 2011

March 7, 2011

January 2, 2011

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 47 of the Act addresses **Landlord's notice: cause**, and provides in part as follows:

47(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 of the Act speaks to **Incorrect effective dates automatically changed**, and provides in part:

53(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Based on the documentary evidence and testimony of the parties, I find that the landlord issued a 1 month notice to end tenancy for cause dated November 8, 2011. I find that the notice was served by way of posting on the tenant's door on that same date. The tenant did not dispute the notice within the 10 day period available for doing same. The tenant is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the notice which, pursuant to section 53 of the Act, I find is December 29, 2011. Accordingly, I find that the landlord is entitled to an order of possession.

As for the monetary order, I find that the landlord has established entitlement to \$1,300.00. This is comprised of \$650.00 in unpaid rent for November and \$650.00 in unpaid rent for December 2011. I order that the landlord retain the security deposit of \$325.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$975.00 (\$1,300.00 - \$325.00).

The landlord has not applied to recover the filing fee.

### Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Thursday, December 29, 2011**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$975.00**. Should it be necessary, this order may be served on the tenant, filed in the 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 21, 2011.

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Residential Tenancy Branch