



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR, FF

### Introduction

This hearing was convened 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, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted no evidence in regards to the dispute.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 26, 2011 and that the Tenant is required to pay monthly rent of \$750.00 on the second day of each month, which is corroborated by tenancy agreement that was submitted in evidence.

The Landlord stated, via the interpreter, that the Tenant has not paid rent for November. The female Tenant stated that she attempted to pay \$500.00 of the rent that was due on November 02, 2011; November 03, 2011; and November 04, 2011 but the Landlord would not answer the door to receive payment. The Landlord stated, via the interpreter, that someone was home most of the time on those dates and that the Tenant did not come to their door.

The Landlord and the Tenant agree that on November 06, 2011 the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of November 15, 2011. The Notice declared that the Tenant owed \$750.00 in rent.

The female Tenant stated that she attempted to pay all of the rent to the Landlord at this time but that the Landlord refused to accept the payment. The Landlord stated, via the interpreter, that the Tenant did not offer payment on November 06, 2011. The female Tenant stated that she has not made any further attempts to pay the rent for November, although she has \$500.00 in cash that she could give to the Landlord today.

The female Tenant stated that she did not dispute the Notice to End Tenancy as she was unable to locate it for a period of time, although she has now located it.

### Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$750.00 on the second day of each month, and that the Tenant has not paid rent for November of 2011.

As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$750.00 in rent for November of 2011, which was due on November 02, 2011.

If rent is not paid when it is due, a landlord may end a tenancy pursuant to section 46 of the *Act*, by providing proper notice. Based on the undisputed evidence presented at the hearing, I find that on November 06, 2011 the Tenant was personally served with a Notice to End Tenancy that directed the Tenant to vacate the rental unit by November 15, 2011, pursuant to section 46 of the *Act*.

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 06, 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.

Section 46(4) 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.

I favour the testimony of the Landlord, who stated that someone was at home most of the time on November 02, 03, and 04 of 2011 but that the Tenant did not come to the

door to pay any portion of the rent and that the Tenant did not offer to pay any portion of the rent on November 06, 2011 over the testimony of the female Tenant who stated that she attempted to pay a portion of the rent on November 02, 03, and 04 of 2011 and that she attempted to pay all of the rent on November 06, 2011.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In the circumstances before me, I find the version of events provided by the Tenant to be unlikely, given that the Landlord is presumably motivated to collect that rent that is due to him and that the Tenant no longer has all of the rent that they allegedly had on November 06, 2011.

Even if the testimony of the female Tenant was true and the Landlord was refusing to accept payment, I find that she should have filed an Application for Dispute Resolution disputing the Notice to End Tenancy, which she could have done even if she did not have a copy of the Notice to End tenancy in her possession.

Section 46(5) of the *Act*, stipulates that a tenant who has not complied with section 46(4) of the *Act* is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice to End Tenancy and that the tenant must vacate the rental unit by that date. As the Tenant did not pay the rent or file an Application for Dispute Resolution, I find that the Tenant accepted that the tenancy ended on November 16, 2011 and that the Tenant should have vacated the rental unit by that date. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served upon the Tenant.

As the Tenant did not vacate the rental unit on November 16, 2011, I find that they are obligated to pay rent, on a per diem basis, for the days they remain in possession of the rental unit for the rental period ending on December 02, 2011. As they have already been ordered to pay rent for the period between November 17, 2011 and December 02, 2011, I find that the Landlord has been duly compensated for that period.

I find that the Tenant fundamentally breached the tenancy agreement when they did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when they did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit makes it

difficult, if not impossible for the Landlord to find new tenants for any period prior to December 15, 2011, as the Tenant has not yet vacated the rental unit. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it can be reasonably expected to experience between December 02, 2011 and December 15, 2011, which, calculated at a daily rate of \$24.19, is \$338.66.

I decline to award compensation for the entire month of December, as it is entirely possible that new tenants could be located for December 15, 2011 if the Tenant vacates in a timely manner. The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for loss of revenue if the Tenants do not comply with the Order of Possession.

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.

### Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon 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 \$1,138.66, which is comprised of \$1,088.66 in unpaid rent/loss of revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,138.66. 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 01, 2011.

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Residential Tenancy Branch