



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR; MNR

### **Introduction**

This is the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent.

On October 20, 2011, this matter was adjourned from a Direct Request proceeding to a participatory Hearing in order to determine if the Notice to End Tenancy could be amended in accordance with the provisions of Section 68 of the Act.

The parties gave affirmed testimony at the Hearing.

### **Preliminary Matter**

The Notice to End Tenancy was not dated as is required by Section 52 of the Act. The Landlord's agent testified that he issued the Notice on October 3, 2011, and served the Tenant with the Notice on October 3, 2011, by posting the Notice to the Tenant's door at the rental unit. The Tenant confirmed that the Notice to End Tenancy was posted to his door on October 3, 2011, and that he had not paid rent when it was due on October 1, 2011.

Therefore, I find that the Tenant knew, or should have known, the information that was omitted on the Notice to End Tenancy and therefore I amended the Notice to include the date that it was issued, October 3, 2011.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

### **Background and Evidence**

The parties agree on the following facts:

Monthly rent is \$1,045.00, due the first day of each month. The Tenant did not pay rent when it was due on October 1, 2011.

The Tenant paid the Landlord \$1,045.00 on October 27, 2011, and the Landlord issued the Tenant a receipt for the money, marked "for use and occupancy only". There were no discussions with respect to reinstating the tenancy at that time.

The Tenant has not paid the Landlord any money since October 27, 2011, and remains living in the rental unit.

The Landlord's agent gave the following testimony:

The Landlord's agent submits that the Landlord has suffered loss of revenue for the month of November 2011, in the amount of \$1,045.00, and seeks to add a claim for that loss to his application together with a monetary reward for late fees for November in the amount of \$25.00.

The Tenant gave the following testimony:

The Tenant stated that he thought the tenancy was reinstated when he paid the Landlord \$1,045.00 on October 27, 2011.

The Tenant testified that he has had financial difficulties, but that he expects that he can pay the Landlord \$1,045.00 on November 21, 2011, and \$1,045.00 on December 1, 2011.

**Analysis**

Based on the testimony of both parties, I accept that the Landlord served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on October 3, 2011. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on October 16, 2011.

The parties agreed that when the Tenant paid the Landlord \$1,045.00 on October 27, 2011, the Landlord's agent provided the Tenant a receipt for "use and occupancy only" and did not enter into discussions with the Tenant about reinstating the tenancy. Therefore, I do not find that there was an agreement to reinstate the tenancy. I find that the tenancy ended on October 16, 2011, and the Tenant had use and occupancy of the rental unit until October 31, 2011 only. I find that the Landlord is entitled to an Order of Possession.

The Tenant agreed that he is still in the rental unit and has not paid the Landlord any money for use and occupancy for the month of November, 2011. I find that the Landlord is entitled to an award in the amount of \$1,045.00 for loss of revenue for November. However, I dismiss the Landlord's application for a \$25.00 "late fee" as this is a fee that is provided for in the tenancy agreement and there is no tenancy in place.

### **Conclusion**

I hereby provide the Landlord an Order of Possession effective 2 days after service of the Order upon the Tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of \$1,045.00 for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: November 17, 2011.

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Residential Tenancy Branch