



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:40 p.m. in order to enable the tenant to connect with this hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord entered oral and written evidence that he posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on December 2, 2011. The landlord testified that he sent the tenant a copy of the dispute resolution hearing package by registered mail on December 16, 2011. He provided the Canada Post Tracking Number to confirm this mailing and testified that Canada Post records show that the tenant signed for receipt of the package on December 24, 2011. I am satisfied that the above documents were provided to the tenant by the landlord in accordance with the *Act*.

At the hearing, the landlord asked for authorization to amend the application for a monetary award to reflect the tenant's payment of \$750.00, accepted for use and occupancy only by the landlord on December 16, 2011, and the tenant's failure to pay any of the rent that became owing on January 1, 2012. I agreed to amend the landlord's application to reflect these changes that have occurred since the landlord applied for dispute resolution, although the overall amount claimed by the landlord remains the same.

### 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? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award

requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy commenced as a six-month fixed term tenancy on September 1, 2009. When the initial term expired, the tenancy converted to a periodic tenancy. Monthly rent is set at \$750.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$375.00 security deposit paid on September 1, 2009.

The landlord applied for a monetary award of \$1,420.00, the amount owing on the 10 Day Notice. Since the 10 Day Notice was issued, the landlord said that the tenant paid \$750.00 on December 16, 2011. The landlord testified that this payment was accepted for use and occupancy only as was noted on the receipt issued to the tenant at that time. The landlord said that the tenant has not paid anything further towards his outstanding rental arrears and has not paid any of his January 2012 rent owing.

### Analysis – Order of Possession

I find that the landlord's acceptance of \$750.00 for use and occupancy only on December 16, 2011 did not continue this tenancy. The tenant failed to pay any portion of the rent identified as owing in the 10 Day Notice within five days of receiving that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving 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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 15, 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

I find that the landlord is entitled to a monetary award of \$670.00 for outstanding rental arrears remaining after the tenant made his December 16, 2011 payment to the landlord. I also find that the landlord is entitled to a monetary award of \$750.00 for unpaid rent that became due on January 1, 2012.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is applicable over this period. As 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 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(s). Should the tenant(s) 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>
Rent Owing from 10 Day Notice	\$670.00
Unpaid Rent from January 2012	750.00
Less Security Deposit	-375.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$1,095.00</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: January 05, 2012

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Residential Tenancy Branch