



# 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 was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The Agent for the landlord provided affirmed testimony that on December 19, 2011, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matter

The application was amended to include the claim for damage or loss in relation to late fees detailed on the application and to include unpaid January, 2012, rent owed.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and fees?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on April 1, 2011; rent is \$525.00 due on the first day of each month. A deposit in the sum of \$262.50 was paid. A copy of the signed tenancy agreement was supplied as evidence. Section B included a term imposing a \$25.00 late rent payment fee.

The landlord stated that on December 6, 2011, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 16, 2011, was served by posting to the door, at 9 a.m., by the caretaker. The caretaker wrote the details of this service on the Notice that was supplied as evidence.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$525.00 unpaid December, 2011, rent within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

On December 15, 2011, the tenant paid the December rent owed.

The tenant has not paid January, 2012, rent owed.

The landlord has requested late payment fees for October, December, 2011 and January, 2012. A copy of a tenant ledger was supplied as evidence which showed October rent paid on the 7<sup>th</sup>.

The tenant was in the unit as recently as January 6, 2011.

### Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenant received the Notice to End Tenancy on December 9, 2011.

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 December 9, 2011, I find that the earliest effective date of the Notice is December 19, 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 December 19, 2011.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on December 19, 2011, pursuant to section 46 of the Act.

Section 46 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. The tenant paid his rent on the 6<sup>th</sup> day after service; December 15, 2011. Despite being served with Notice of this hearing which indicated that the landlord was pursuing an end of the tenancy; the tenant did not attend.

There is no evidence before me that the tenant disputed the Notice prior to December 15, 2011; the tenant did not pay the rent owed within 5 days of December 9, 2011. Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective two days after the order is served

In the absence of evidence to the contrary, I find that the tenant has not paid January, 2012, rent in the amount of \$525.00 and that the landlord is entitled to compensation in that amount.

I find that the tenant paid rent late in October and December, 2011; and that he has not paid January 2012 rent; therefore, the landlord is entitled to late fees in the sum of \$75.00.

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.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$262.50, in partial satisfaction of the monetary claim.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to 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 \$650.00, which is comprised of \$525.00 unpaid January, 2012 rent, \$75.00 fees and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$262.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$387.50. 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: January 09, 2012.

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Residential Tenancy Branch