



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR; MNR; MNDC, MNSD; FF

### **Introduction**

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue, to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was established that the Landlord served the Tenant with the Notice of Hearing documents and copies of its documentary evidence, by registered mail sent January 3, 2012. The Landlord provided a copy of the registered mail receipt and tracking number in evidence.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent and loss of revenue?

### **Background and Evidence**

#### **The parties agreed on the following facts:**

This tenancy started on December 1, 2010. The rental unit is subsidized. Market rent is \$952.00, but after applying the subsidy allotted to the Tenant, the Tenant currently pays \$529.00 per month for rent. Rent is due on the 1<sup>st</sup> day of the month. The Tenant paid a security deposit in the amount of \$476.00 at the beginning of the tenancy.

#### **The Landlord's agent gave the following testimony:**

The Tenant has been falling behind on paying the rent. The Landlord provided a copy of the Tenant ledger in evidence. The Tenant did not pay rent when it was due on December 1, 2011. On December 9, 2011, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, by posting the Notice on the Tenant's door at the rental unit.

The Landlord's agent testified that the Tenant paid December's rent in the amount of \$429.00 on January 9, 2012. He stated that the Tenant also paid January's rent and the remaining back rent owed, in the amount of \$610.00, on January 17, 2012. The Landlord's agent testified that the money order in the amount of \$610.00 was dropped off at his office by someone other than the Tenant and that he mailed the Tenant a receipt, on which he noted that the payment did not reinstate the tenancy and that he was accepting the money for use and occupancy of the rental unit only.

The Tenant gave the following testimony:

The Tenant acknowledged receiving the Notice to End Tenancy. The Tenant testified that she is dependent upon monies from the Family Maintenance Enforcement Program, who collects support cheques from her ex-husband. She stated that these cheques normally arrive by the 5<sup>th</sup> day of the month. The Tenant testified that she had managed to save enough money in a contingency account so that she was able to pay rent on the 1<sup>st</sup>, but that her ex-husband had recently stopped paying support.

The Tenant stated that she did not understand that she could still be evicted since all of the outstanding rent was paid yesterday.

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 December 9, 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 the provisions of Section 46(5) of the Act, the Tenant **is conclusively presumed to have accepted that the tenancy ended on December 22, 2011**. The Notice to End Tenancy also makes it clear that the Tenant may be evicted if she does not respond to the Notice by paying the outstanding rent, or filing an application for Dispute Resolution within 5 days of receipt of the Notice.

I find that there was no agreement between the parties that the tenancy was reinstated when the Tenant gave the Landlord \$610.00 on January 17, 2012.

I find that the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenant**.

The Landlord's application for a Monetary Order for unpaid rent and loss of revenue is dismissed, as the Tenant has paid the indebtedness.

The Landlord has been successful in its application for an Order of Possession and I find that it is entitled to recover the cost of the **\$50.00 filing fee** from the Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct **\$50.00** from the security deposit. The remainder of the security deposit must be applied in accordance with the provisions of the Act.

### **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.

The Landlord's application for a Monetary Order for unpaid rent and loss of revenue is dismissed.

Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct **\$50.00** from the security deposit in recovery of the filing fee. The remainder of the security deposit must be applied in accordance with the provisions of the Act.

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 18, 2012.

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Residential Tenancy Branch