



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MND, MNR, MNSD, FF, MT, OLC, RP, PSF, LRE

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on June 13, 2011 for:

1. An Order allowing more time to make an application to cancel Notices to End Tenancy – Section 66;
2. An Order for the Landlord to comply with the Act, regulation or tenancy agreement - Section 62
3. An Order for the Landlord to make repairs to the unit – Section 32;
4. An Order for the Landlord to provide services or facilities required by law - Section 65;
5. An Order suspending the Landlord’s right to enter the unit – Section 70; and
6. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on January 9, 2012 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for damage to the unit – Section 67;
4. An Order to retain all or part of the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. As the Tenant did not appear, the Tenant’s application is dismissed.

### Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy began on November 1, 2011. Rent in the amount of \$1,250.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$625.00. A move-in inspection was completed by the Parties and the Tenant received a copy of the inspection report. The Tenant failed to pay the full rent for December 2011, leaving rental arrears of \$550.00 and failed to pay any rent for January 2012. On January 5, 2012, the Landlord served the Tenant with a notice to end tenancy for non-payment of rent by registered mail. The Landlord claims **\$1,800.00** for unpaid rent.

The Tenant caused a flood in the unit and damaged two doors in the unit and on December 26, 2011, the Tenant signed an agreement to pay the amount of \$1,581.22 to the Landlord for damages to the carpets, ceiling and doors. The Tenant paid \$300.00 towards this amount leaving a balance of **\$1,281.22**, which the Landlord claims.

Due to the flood in the Tenant's unit, damages occurred in the lower unit and the Landlord incurred the cost of \$200.00 to compensate the tenant in the lower unit for these damages. This tenant provided Witness evidence in relation to this damage and costs. The Landlord claims the amount of **\$200.00** in compensation for this loss.

The Landlord is willing to accept the above claimed amounts in full settlement of all costs claimed in relation to losses caused by the flood and unpaid rent.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two

things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. Although the Tenant filed an application to dispute the notice, the Tenant's application has been dismissed, as the Tenant did not appear at the Hearing. The Tenant has not moved out of the unit and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **\$1,800.00** in unpaid rent.

Given the signed agreement by the Tenant accepting liability and costs in relation to the flood, I find that the Landlord is entitled to the amount of **\$1,281.22**. Accepting the Landlord and Witness evidence in relation to damages to the lower unit, I find that the damages occurred as a result of the act of the Tenant, that the Landlord incurred costs for those damages and is entitled to the amount of \$200.00 in compensation. The Landlord is also entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$3,331.22** (\$1,800.00 + 1,281.22 + 200.00 + 50.00). The security deposit plus interest of **\$625.00** is set off from this entitlement leaving the amount of **\$2,706.22** owing by the Tenant to the Landlord.

### Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I order** that the Landlord retain the **deposit** and interest of \$625.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,706.22**. If necessary, this order may be filed in the 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 31, 2012.

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Residential Tenancy Branch