



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for 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 stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Respondent at the rental unit, via registered mail, on December 22, 2011. The Landlord submitted Canada Post documentation that corroborates this statement. I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent from December of 2011 and January of 2012; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Agent for the Landlord stated that this tenancy began on March 15, 2011; that the Tenant is required to pay monthly rent of \$870.00 by the first day of each month; and that the Tenant paid a security deposit of \$435.00.

The Agent for the Landlord stated that on December 01, 2011 the Tenant had not paid \$870.00 in rent that was due for December of 2011.

The Agent for the Landlord stated that she was at the rental unit on December 14, 2011, at which time she observed that some property belonging to the Tenant was still in the rental unit, although she is not certain whether he was still living in the rental unit at that

time. She stated that she does not believe that the Tenant was living in the rental unit in January of 2012.

The Agent for the Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of December 23, 2011, on the door of the rental unit on December 12, 2011. The Notice to End Tenancy, which was submitted in evidence, declared that the Tenant has failed to pay rent of \$870.00.00 that was due on December 01, 2011.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$870.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant still owes \$870.00 in rent for December of 2011. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant is obligated to pay rent for December of 2011.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on December 12, 2011.

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 15, 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 15, 2011, I find that the earliest effective date of the Notice was December 25, 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 25, 2011.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the

tenancy ended on the effective date of the Notice. On this basis I find that the Landlord is entitled to an Order of Possession.

As I have no evidence that the Tenant did not vacate the rental unit on December 25, 2011, I find that the Tenant is not obligated to pay rent, on a per diem basis, for any period after the tenancy ended. I therefore dismiss the Landlord's claim for compensation for unpaid rent from January of 2012, as no rent was due for that period. I note that the Landlord has not made a claim for compensation for loss of revenue for January of 2012.

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.

### Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon 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 \$920.00, which is comprised of \$870.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit, in the amount of \$435.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$485.00. 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 10, 2012.

---

Residential Tenancy Branch