



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD and FF

This application was brought by the landlord on January 18, 2012 seeking a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding. In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend the application to include requests for an Order of Possession pursuant to a Notice to End Tenancy for unpaid served by posting on the tenants door on January 6, 2012, and authorization to retain the security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing in person on January 18, 2012, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order as requested and authorization to retain the security deposit in set off.

### Background and Evidence

This tenancy began on March 1, 2011. Rent is \$1,700 per month and the landlord holds a security deposit of \$850 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence the Notice to End Tenancy had been served after the tenant had failed to pay the \$1,700 rent due on January 1, 2012. In the interim, the tenant paid \$1,350 toward the January rent on January 26, 2012, and had not paid the February rent at the time of the hearing and remained in the rental unit.

Therefore, the landlord requested a Monetary Order for the \$350 outstanding for January rent and \$1,700 for the unpaid rent/loss of rent for February 2012 and an Order of Possession. The landlord stated that the respondent is otherwise an excellent tenant and it is possible he would re-instate the tenancy if the outstanding rent was paid, but he requested the orders in the event it was not.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was January 19, 2012, taking into account the three days deemed service of documents served by posting.

Accordingly, I find that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off, calculated as follows:

Rent shortfall for January 2012	\$ 350.00
Filing fee	<u>50.00</u>
Sub total	\$2,100.00
Less retained security deposit (No interest due)	<u>- 850.00</u>
<b>TOTAL</b>	<b>\$1,250.00</b>

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenant.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for \$1,250.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: February 02, 2012.

---

Residential Tenancy Branch