



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: OPR, MNR, MNSD and FF  
Tenants: CNR, SS, O and FF

### **Introduction**

This hearing was convened on applications by both the landlord and the tenant.

By application dated January 23, 2011, the landlord sought an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served in person on January 9, 2012. The landlord also sought a Monetary Order for the unpaid rent, and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application of December 19, 2011, the tenant sought to have the Notice to End Tenancy set aside, other unspecified remedies and recovery of his filing fee.

### **Issue(s) to be Decided**

The landlord's application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent and filing fee, and authorization to retain the security deposit in set off.

The tenants' application requires a decision on whether there are grounds to set the Notice to End Tenancy aside and whether the other orders sought are warranted.

### Background and Evidence

This tenancy began on September 1, 2010 under a fixed term agreement ending on February 28, 2011 and which time the applicant's co-tenant left the tenancy. Rent was \$1,450 rising to \$1,512 on February 1, 2012 and the landlord holds a security deposit of \$725 paid on August 12, 2010.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy of January 9, 2012 had been served after the tenant failed to pay the rent for December 2011 and January 2012. At the time of the hearing the arrears remained unpaid and the tenant had not paid the rent due on February 1, 2012.

The tenant's representative gave evidence that the tenant's funds are tied up in Taiwan and that he has received written assurance and that he will be receiving a substantial payment imminently. He stated that the landlord had, for a period following February 2011, accepted late payments due to the delays in the tenant receiving funding but that the rent had always been paid in full eventually and would be again.

The landlord had submitted into evidence a letter to the tenant dated September 16, 2011 acknowledging the earlier tolerance of late rent but advising that, as of October 2011, the landlord could no longer accept late payment.

The landlord wrote to the tenant again on December 25, 2011 noting that the rent for December was outstanding and advising that if the December and January rents were not paid, the landlord would apply for an Order of Possession.

The landlord requested an Order of Possession to take effect two days from service of it on the tenant. The landlord also requested a Monetary Order for the rent for December 2011 and January 2012 and, as she may be able to find new tenants for the latter of half of February, one-half of the February rent.

The tenant did not raise questions of substitute service or other matters indicated on the application form.

### 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 as the tenant has done in this matter.

In this instance, while the tenant has made application, I find as fact that the tenant did not pay the rent within five days of receiving the notice which, therefore, remains in effect. .

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 December 20, 2011.

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 for December 2011, January 2012 and for one-half of February 2012.

In addition, I find that the landlord is entitled to recover the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

The monetary award is calculated as follows:

Rent December 2011	\$1,450.00
One-half of increased rent for February 2012 (\$1,512 x .5 = \$756))	756.00
Filing fee	<u>50.00</u>
Sub total	\$3,706.00
Less retained security deposit (No interest due)	<u>- 725.00</u>
<b>TOTAL</b>	<b>\$2,981.00</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 \$2,981.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application for any further damage or losses as may be ascertained at the conclusion of the tenancy.

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 03, 2012.

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Residential Tenancy Branch