



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNSD, FF**

### Introduction

This hearing was scheduled 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.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The female respondent was served Notice of this hearing sent via registered mail to the rental unit address on January 20, 2012; the landlord has a tracking number for this mail. The male respondent stated that his co-tenant vacated the unit in September, 2011; she has not had her name removed from the tenancy agreement. The hearing package for the female tenant is at the rental unit.

Therefore, in the absence of evidence that the female tenant has been served with Notice of this hearing, I have dismissed the claim against the female tenant. I have based this decision on the evidence before me showing that the Notice ending tenancy included only the male tenant's name, indicating that the manager understood that the female no longer resided in the unit.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and fees?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

### Background and Evidence

A copy of the tenancy agreement signed by the tenant was supplied as evidence. The tenancy commenced on November 1, 2008; rent is \$748.00 per month, due on the first day of each month. A deposit in the sum of \$374.00 was paid on October 31, 2008.

The tenant stated he first received a copy of the 10 Day Notice ending tenancy when he was served a copy of the hearing package, sent to him by registered mail on January 20, 2012.

I asked that the previous manager be called to the hearing; as she served the 10 Day Notice to the tenant. The previous manager, mother to the male tenant, attended the hearing. She provided affirmed testimony that on January 4, 2012, a Ten (10) Day Notice to End Tenancy for non-payment of Rent, which had an effective date of January 14, 2012, was served by posting to the tenant's door.

The tenant then stated that he had received the Notice but was "up in the air" after he had found it.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$685.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The parties agreed that on January 27, 2012, the tenant paid \$675.00 and was issued a receipt for use and occupancy only. The tenant confirmed he has not paid February rent owed.

The landlord has claimed \$25.00 in late fees for January and February, 2012, unpaid January rent in the sum of \$10.00 plus unpaid February rent in the sum of \$748.00. the tenancy agreement includes a late fee clause.

### Analysis

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 January 7, 2012. I found the tenant's mother's testimony believable and the tenant's response to her testimony revealed that he did indeed receive the Notice after it was posted to the door. Once the tenant received the hearing

package he paid rent owed within 5 days, but \$10.00 remained owing. The tenant did not pay February, rent owed.

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 January 7, 2012, I find that the earliest effective date of the Notice is January 17, 2012.

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 January 17, 2012.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on January 17, 2012, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenant did not pay all of the rent owed within 5 days of January 7, 2012, and did not dispute the Notice, therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$10.00 for January 2012 and that the landlord is entitled to compensation for loss of rent revenue for February, 2012 in the sum of \$748.00.

I find, pursuant to section 44 of the Act that the tenancy ended on the effective date of the Notice and that the tenant has been over-holding since that time. Therefore, I find that the landlord is entitled to January rent late fee in the sum of \$25.00. As the tenancy then ended, I find that the claim for a February late fee is dismissed.

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.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$374.95, in partial satisfaction of the monetary claim.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to 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 \$833.00, which is comprised of \$758.00 in unpaid rent and loss of rent revenue, the January, 2012, late fee and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$374.95, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$458.05. 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.

The claim against the female respondent is dismissed.

The claim for the February, 2012, late fee is dismissed.

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 14, 2012.

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Residential Tenancy Branch