



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent and damage to the unit; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. She testified that she served the Notice of a Dispute Resolution Hearing to the tenant in person on January 26<sup>th</sup>, 2012, and that she explained to the tenant the meaning of the notice. The tenant did not participate and the hearing proceeded in the tenant's absence.

At the outset, the landlord clarified that she was not making a claim for damages as originally specified in her application; therefore this aspect of her application was withdrawn.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the month to month tenancy started on July 1<sup>st</sup>, 2011. On a verbal agreement, the rent was reduced from \$1800.00 to \$1500.00 per month during the course of the tenancy and the tenant paid a security deposit of \$900.00.

The landlord testified that the tenant's husband, who was the only source of income, left the rental unit and that the tenant is now without any ability to pay the rent. In her documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy served on the tenant in person on January 2<sup>nd</sup>, 2012. The landlord submitted a claim for unpaid rent as follows:

- December 2011:           \$ 600.00
- January 2012:           \$1500.00
- February 2012:         \$1500.00
- Sub-total:               \$3600.00.

### Analysis

I accept the landlord's undisputed testimony that she served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. The landlord's Notice to End Tenancy is valid and on that basis the landlord is entitled to an order of possession.

I also accept on the evidence that the tenant has not paid rent for three months and that the landlord is entitled to recover the loss of rental income as claimed.

### Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$3600.00. I authorize the landlord to retain the tenants' \$900.00 security deposit for a balance owing of \$2700.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$2750.00.

This Order may be registered 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: February 14, 2012.

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Residential Tenancy Branch