



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD and FF

This application was brought by the landlord on February 13, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on February 2, 2012. The landlord also sought a Monetary Order for unpaid rent, late fee and recovery of the filing fee for this proceeding.

In addition, on the landlord's request, I have exercised the discretion granted under section 64(3)(c) of the *Act* to amend the application to include a request for authorization to retain the security deposit in set off against the balance claimed.

Despite having been served with the Notice of Hearing on February 16, 2012, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his 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 under a fixed term rental agreement set to end on February 29, 2012. Rent is \$855 per month and the landlord holds a security deposit of \$427.50 paid on February 14, 2012.

During the hearing, the landlord gave evidence the Notice to End Tenancy had been served after the tenant failed to pay the rent due on February 1, 2012.

In the interim, the February rent remains unpaid and the landlord said the tenant was in the process of moving out of the rental unit at the time of the hearing.

The landlord stated that he had been able to find a new tenant for March 2012, but that he still wished to have the Order of Possession in the event the subject tenant did not complete the move out as promised.

The landlord requested a Monetary Order for the February rent, \$20 late fee, recovery of the filing fee and authorization to retain the security deposit in set off against the balance claimed.

### 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 February 15, 2012 taking into account the three days deemed service of notice 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, late fee and recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off, calculated as follows:

Rent for February 2012	\$855.00
Filing fee	<u>50.00</u>
Sub total	\$925.00
Less retained security deposit (No interest due)	<u>- 427.50</u>
<b>TOTAL</b>	<b>\$497.50</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 \$497.50, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application to recover for any damages 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: March 01, 2012.

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Residential Tenancy Branch