



# Dispute Resolution Services

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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 March 8, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on March 2, 2012. The landlord also sought 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 against the balance claimed.

Despite having been served with the Notice of Hearing served in person on March 8, 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 November 30, 2011. Rent is \$620 per month and the landlord holds a security deposit of \$310 paid on December 3, 2011.

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

At the time of the hearing, the unpaid rent remained outstanding and the tenant remains in the rental unit.

Therefore, the landlord requested an Order of Possession and a Monetary Order for the unpaid rent, late fee of \$30, 2012, and the filing fee for this proceeding.

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 March 12, 2012.

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 parking, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off. However, I must note that while the rental agreement provides for a \$30 late fee, regulations limit such fee to no more than \$25.

The monetary award is calculated as follows:

Rent for March 2012	\$620.00
Filing fee	<u>50.00</u>
Sub total	\$695.00
Less retained security deposit (No interest due)	<u>- 310.00</u>
<b>TOTAL</b>	<b>\$385.00</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 \$385.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application to claim any further damage or losses as may be ascertained following 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 22, 2012.

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Residential Tenancy Branch