



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that he received the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on his door on February 11, 2012. The tenant also confirmed that the landlord(s) handed him a copy of the landlords' dispute resolution hearing package on March 2, 2012. I am satisfied that the landlords served these documents to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This periodic tenancy commenced on November 1, 2011. Monthly rent is set at \$600.00, payable in advance on the first. The tenant did not pay his required security deposit and the landlords do not hold a security deposit for this tenancy.

The parties agreed that the landlords issued the 10 Day Notice for unpaid rent owing as of March 2, 2012. The parties also agreed that the landlords accepted \$600.00 for "use and occupancy only" on March 2, 2012. The tenant did not dispute the landlords' evidence that the tenancy was not continued by the landlords' acceptance of the March 2, 2012 payment for use and occupancy only. The parties agreed that the tenant owes the landlords \$1,200.00 in unpaid rent for December 2011 and February 2012. The tenant testified that he is planning to vacate the rental unit before April 1, 2012.

### Analysis

I find that the landlords' acceptance of a payment of \$600.00 for use and occupancy only did not continue this tenancy or cancel the landlords' 10 Day Notice. There is undisputed evidence that the tenant failed to pay all of the outstanding rent identified as owing within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by February 24, 2012. As that has not occurred, I find that the landlords are entitled to an Order of Possession. The landlords' acceptance of the \$600.00 payment for use and occupancy only allowed the tenant to remain in the rental unit until March 31, 2012. I provide the landlords with a formal copy of an Order of Possession effective on March 31, 2012.

I find that there is undisputed evidence that the landlords are entitled to a monetary award of \$1,200.00 for unpaid rent arising from this tenancy. Since the landlords have been successful in this application, I allow them to recover their \$50.00 filing fee from the tenant.

### Conclusion

The landlords are provided with a formal copy of an Order of Possession requiring the tenant to vacate the rental premises by 1:00 p.m. on March 31, 2012. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlords' favour in the amount of \$1,250.00, an amount which allows the landlords to recover the unpaid rent arising from this tenancy and their filing fee. The landlords are provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 22, 2012

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Residential Tenancy Branch