



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the Hearing, the Landlord and owner of the unit requested an amendment to the application to add the owner’s name as a Landlord. As there is no prejudice to the Tenant in adding the owner’s name, I amend the application to add the owner as a Party to the application.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on August 1, 2011. Rent in the amount of \$850.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$425.00. The Tenant failed to pay rent for the months of November and December 2011 as well as January, February and March 2012. On February 7, 2012 the Landlord served the Tenant with a notice to end tenancy for non-payment of rent (the "Notice") by mailing the Notice to the Tenant. The Tenant has not paid the outstanding rent, has not moved out of the unit and has not filed an application for dispute resolution to dispute the Notice. The Landlord claims \$4, 250.00 for unpaid rent. The Landlord states that the Tenant has indicated an intention to stay in the unit for as long as possible and the Landlord anticipates a potential loss of rental income for April 2012. The Landlord claims this loss of \$850.00.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **\$4,250.00** in unpaid rent.

Although the Landlord claims a loss of rental income for April 2012, as this is a potential loss only, I decline to make an award and give the Landlord leave to reapply for any lost rental income that may be caused by the act or negligence of the Tenant. The Landlord is entitled to recovery of the **\$50.00** filing fee, for a total entitlement of **\$4,300.00**.

The **security deposit** will be off-set from the award made herein.

***Calculation for Monetary Order***

Rental Arrears	\$4,250.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-425.00
<b>Total Monetary Award</b>	<b>\$3,875.00</b>

Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I order** that the Landlord retain the **deposit** and interest of \$425.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$3,875.00**. If necessary, this order may be filed 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: March 14, 2012.

---

Residential Tenancy Branch