



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent only, the tenant did not attend.

The landlord testified she served the tenant with the notice of hearing documents and her Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on February 15, 2012 in accordance with Section 89. As per Section 90, the documents are deemed received by the landlord on the 5<sup>th</sup> day after it was mailed.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Prior to the hearing the landlord submitted a fax with instructions to amend her Application to include March rent. While this was not appropriate method to make an amendment to her Application, I confirmed with her during the hearing that she wished to include this amendment and as such I accept the amendment.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on December 2, 2011 for a 7 month fixed term tenancy beginning on December 1, 2011 for the monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month and a security deposit of \$500.00 was paid. The tenancy agreement included a clause for late payment fees in the amount of \$25.00; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on February 2, 2012 with an effective vacancy date of February 11, 2012 due to \$1,000.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the month of February 2012 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on February 2, 2012 at 12:00 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord submitted the tenant paid \$300.00 towards rent on February 14, 2012, and the landlord issued a receipt for use and occupancy only.

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on February 5, 2012 and the effective date of the notice is amended to February 15, 2011, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

As to the amount of the landlord's monetary claim, I find the landlord is entitled to the balance of rent owed for February 2012 and the late payment fee. However, as this hearing was held on March 1, 2012 and rent is due on the 1<sup>st</sup> of each month, I find the tenant has until the end of the day to pay rent for March 2012 and as such the landlord's Application for March rent is premature.

Therefore, I dismiss the portion of the landlord's Application seeking compensation for March rent with leave to reapply.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$775.00** comprised of \$700.00 rent owed; \$25.00 late fees and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 01, 2012.

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Residential Tenancy Branch