



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for An Order of Possession and a Monetary Order for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord's agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on February 14, 2012. Based on the evidence of the Landlord's agent, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the Tenant's security deposit?

### Background and Evidence

This tenancy started on August 1, 2009 as a month to month tenancy. Rent is \$864.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$530.00 on August 1, 2009. The Landlord's agent said the Tenant is living in the rental unit and she requested an Order of Possession with an effective date as soon as possible.

The Landlord's agent said that the Tenant has rent arrears from multiple months in the amount of \$1,527.91 and as a result the Landlord posted a 1 Month Notice to End Tenancy for Cause dated January 25, 2012 on the Tenant's door. The Landlord's agent continued to say that the Tenant also has unpaid rent for March, 2012 in the amount of \$864.00. The Landlord's agent said their total claim is for \$\$2,391.91 in unpaid rent and the \$50.00 filing fee for this proceeding.

The Landlord submitted into evidence the Tenant's rent payment ledger which the Landlord Agent said shows the continuous late rent payments from October, 2009. As well the Landlord say they have worked with the Tenant on payment schedules and agreements, but these efforts have not worked because the Tenant does not keep his agreements.

## Analysis

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause, a Tenant must apply for dispute resolution. If the Tenant fails to do this thing, then under section 47(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Policy guideline 38 says three late payments are the minimum number sufficient to justify a notice under these provisions. It is apparent from the Landlord's evidence that the Tenant has been late with the rent payment more than 3 times.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy three days after it was posted, or on January 28, 2012. Consequently, the Tenant would have had to apply to dispute that amount no later than February 6, 2012.

I find that the Tenant has applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent of \$1,527.91 for the rent arrears up to and including February, 2012 and unpaid rent for March, 2012 in the amount of \$864.00. The total unpaid rent is \$2,391.91.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit as partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:



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	Rent arrears:	\$2,391.91	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,441.91
Less:	Security Deposit	\$ 530.00	
	Subtotal:		\$ 530.00
	Balance Owing		\$1,911.91

## Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,911.91 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

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Dispute Resolution Officer