



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing and gave affirmed testimony, however, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on March 13, 2012, the tenant did not attend. The landlord provided evidence of having sent the documents to the tenant in that manner and on that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided have been reviewed and are considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2012 and the tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$400.00, which is still held in trust by the landlord. No pet damage deposit was collected.

The landlord further testified that the tenant failed to pay rent when it was due for the month of March, 2012. The landlord attended at the rental unit on March 1, 2012 and was told that rent would be paid the following day. The landlord re-attended on March 2, 2012 and no rent was paid. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. After receiving no rent, the landlord served the tenant with a second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and provided a copy for this hearing. The notice is dated March 6, 2012 and states that the tenant failed to pay rent in the amount of \$800.00. The notice contains an expected date of vacancy of March 16, 2012, and the landlord testified that the notice was personally handed to an occupant who is apparently over the age of 19 and apparently resides with the tenant. Both pages of the 2-page form have been provided.

### Analysis

The *Residential Tenancy Act* states that if the tenant does not pay rent when it is due, the landlord may issue a notice to end the tenancy. Once served, the tenant has 5 days to pay the rent in full, in which case the notice is of no effect, or apply for dispute resolution to dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

In the circumstances, I find that the tenant was served with the notice pursuant to the *Residential Tenancy Act*. The tenant did not pay the outstanding rent or apply for dispute resolution within the 5 days provided by the *Act*. I further find that the landlord is entitled to an Order of Possession.

As for the monetary order, I also find that the landlord has established a claim for unpaid rent for the month of March, 2012 in the amount of \$800.00. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The landlord currently holds in trust a security deposit in the amount of \$400.00. The landlord has applied to retain the security deposit in partial satisfaction of the claim. In the circumstances, I find that any monetary award against the tenant ought to be set off from any amount due to the tenant, and pursuant to my authority under Section 72 (2) (b) of the *Residential Tenancy Act*, I find that the landlord is entitled to that claim.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. The tenant must be served with the Order of Possession. If the landlord serves the order on the tenant and the tenant fails 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 further order that the landlord retain the security deposit and interest of \$400.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$450.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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 28, 2012.

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Residential Tenancy Branch