



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, MNR, FF

### Introduction

This hearing dealt with the landlord's application seeking to end the tenancy, based on a 1 Month Notice to End Tenancy for Cause (the "Notice"), a monetary order for unpaid rent, and to recover the filing fee for the application.

The parties and their witnesses appeared, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

As a preliminary issue, occupant stated the listed tenant was unable to attend and that he is a tenant of the rental unit, being listed on the tenancy agreement. I note that the tenancy agreement listed him as an occupant. However the occupant/tenant had full knowledge of the issues and circumstances of the dispute and I have listed him as the tenant for the purposes of this Decision.

As another preliminary issue, the tenant presented that this dispute was resolved earlier by the Residential Tenancy Branch in another hearing. A review of that Decision from the hearing on January 16, 2012, shows that that hearing was based upon the landlord's 10 Day Notice to End Tenancy for Unpaid Rent and not the 1 Month Notice to End Tenancy for Cause which is the subject of this dispute. Therefore the earlier Decision was not considered for purposes of this hearing and Decision and the hearing proceeded on the landlord's application on the 1 Month Notice to End Tenancy for Cause.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit, a monetary order for unpaid rent and to recover the filing fee?

### Background and Evidence

This one year, fixed term tenancy began on August 1, 2010, continues now on a month to month basis, current monthly rent is \$833.28 and the tenant paid a security deposit of

\$400.00 on or about July 19, 2010 and a pet damage deposit of \$397.50 on or about August 10, 2010.

The landlord submitted that the tenant was issued a 1 Month Notice to End Tenancy for Cause. The Notice was dated January 16, 2012, was delivered via posting on the door on that date, listing an effective end of tenancy on February 29, 2012. The tenant confirmed receipt of the Notice.

The Notice explains that the tenant had ten days to dispute the Notice. It also explains that if the tenant does not file an Application to Dispute the Notice within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

The causes as stated on the Notice alleged that the tenant is repeatedly late in paying rent.

When questioned, the landlord listed 8 months since May 2011, in which the tenant made late payments, late partial payments or no payments.

The tenant confirmed that the tenants were late in paying 7 months.

The landlord submitted in testimony and written evidence that the total amount of unpaid rent owed by the tenant is \$1178.12. The tenant confirmed the accuracy of this amount.

The landlord's relevant evidence included a copy of 1 Month Notice to End Tenancy for Cause, a tenancy agreement, and accounting and banking records.

### Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

I find that the tenant received the 1 Month Notice to End Tenancy for Cause on or before January 19, 2012, and did not apply to dispute the Notice. Therefore pursuant to section 47(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must move out of the rental unit.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant.

I am enclosing the order of possession with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Supreme Court of British Columbia should the tenant fail to comply with this order of possession by vacating the rental unit.

I find that the landlord has established a total monetary claim of **\$1228.12** comprised of outstanding rent of **\$1178.12** and the **\$50.00** fee paid by the landlord for this application.

At the landlord's verbal request, I allow the landlord to retain the tenant's security deposit of \$400.00 and the pet damage deposit in the amount of \$397.50 in partial satisfaction of the monetary claim and I grant the landlord a monetary order pursuant to section 67 of the Residential Tenancy Act for the balance due of **\$430.62**.

I am enclosing the monetary order with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this monetary order.

#### Conclusion

The landlord is granted an order of possession, may keep the tenant's security deposit and pet damage deposit in partial satisfaction of the monetary claim and is granted a monetary order for the balance due of **\$430.62**.

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 21, 2012.

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Residential Tenancy Branch