



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MNSD, MNDC, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent and for cause; a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. She testified that she served the Notice of a Dispute Resolution Hearing to the tenant by way of registered mail sent on March 22, 2012, and provided a Canada Post tracking number. The tenant did not participate and the hearing proceeded in the tenant's absence.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of the upper level of a single detached home. Pursuant to a written agreement, the month to month tenancy started on May 1<sup>st</sup>, 2011. The rent is \$1300.00 per month and the tenant paid a security deposit of \$650.00.

The landlord testified that the tenant has not paid rent for February, March, and now April 2012. In her documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy dated March 6<sup>th</sup>, 2102 and effective March 16<sup>th</sup>, 2012, with a copy of a proof of service that it was served on the tenant in person on March 6<sup>th</sup>, 2012. The landlord said that she has had no further contact with the tenant since, but that there is evidence that the tenant continues to reside in the unit.

The landlord submitted a claim to recover the loss of three months' rent as stated above.

### Analysis

I accept the landlord's undisputed testimony that she served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. The landlord's Notice to End Tenancy is valid and on that basis the landlord is entitled to an order of possession and it is not necessary that I consider the 1 Month Notice to End Tenancy for repeatedly late rent payments.

Based on the evidence I accept that the tenant has not paid rent for three months and that the landlord is entitled to recover the loss of rental income as claimed.

### Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$3900.00. I authorize the landlord to retain the tenant's \$650.00 security deposit for a balance owing of \$3250.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$3300.00.

This Order may be registered 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: April 03, 2012.

---

Residential Tenancy Branch