



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC and FF

This application was brought by the landlord on April 3, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on March 16, 2012. The landlord also sought a Monetary Order for unpaid rent, NSF and late fees and recovery of the filing fee for this proceeding.

In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend his application to request authorization to retain the tenant's security deposit in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on April 3, 2012, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order as requested and authorization to retain the security deposit in set off.

### Background and Evidence

This tenancy began on June 1, 2009. Rent is \$1,300 per month and the landlord holds a security deposit of \$650 paid on or about June 1, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served when the tenant had failed to pay the \$1,300 rent due on both March 1, 2012 and April 1, 2012.

The landlord stated that the tenant had paid the March rent with late and NSF fees on April 13, 2012, an amount totalling \$1,350. The landlord issued a receipt for that payment with the notation, "for use and occupancy only," indicating that acceptance of the March rent did not reinstate the tenancy.

The landlord stated that at the time of the hearing on April 19, 2012, the April rent remained unpaid.

Therefore, the landlord requested an Order of Possession to take effect on April 30, 2012, and a Monetary Order for the April rent, late fee and filing fee.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* permits a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on April 30, 2012 as requested.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for April 2012, the \$25 late fee and \$50 filing fee and authorization to retain the security deposit in set off.

The monetary award is calculated as follows:

Rent for April 2012	\$1,300.00
Filing fee	<u>50.00</u>
Sub total	\$1,375.00
Less retained security deposit (no interest due)	<u>- 650.00</u>
<b>TOTAL</b>	<b>\$725.00</b>

### Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on April 30, 2012.

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for \$725.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application for any damages as may be ascertained at the conclusion of the tenancy.

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 19, 2012.

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Residential Tenancy Branch