



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MND 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 in person on April 2, 2012. The landlord also sought a Monetary Order for unpaid rent, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the tenant's security deposit in set off against the balance claimed.

Despite having been served with the Notice of Hearing in person on April 4, 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 May 1, 2005. Rent is \$765 per month and the landlord holds a security deposit of \$335 paid on or about May 1, 2005.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served when the tenant had failed to pay the \$765 rent due on April 1, 2012 and that the rent remained unpaid at the time of the hearing.

The landlord gave further evidence that she has not seen the tenant since the tenant was arrested by a Sherriff on a criminal matter on April 5, 2012.

The landlord stated that locks to common areas of the rental building had been changed on April 9, 2012 following intrusions into common areas, but that notice had been posted advising all tenants to contact her for new keys. She stated she had not heard from the subject tenant and that she had not changed the lock on the door to the rental unit. She submitted copies of two written threats made by the tenant to her and to another tenant.

The landlord estimates substantial damage but has not yet had the opportunity to ascertain exact costs and I am severing a clam for the common area locks to be included with the pending claim for damages. The landlord remains at liberty to make a further application for all damages once she has regained possession of the rental and has the opportunity to assemble evidence.

In the interim, the landlord requested an Order of Possession, a Monetary Order for the unpaid rent for April 2012 and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off.

### Analysis

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

Section 46 of the *Act* provides that 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 which was April 12, 2012.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant. 1 p.m. on April 4, 2012.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent and filing fee for this proceeding and authorization to retain the security deposit in set off.

The monetary award is calculated as follows:

Rent for April 2012	\$765.00
Sub total	\$815.00
Less retained security deposit	- 335.00
Less interest (May 1, 2005 to date)	- 11.87
<b>TOTAL</b>	<b>\$468.13</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 two days from service of it on the tenant.

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 \$468.13, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application to claim any further damage or losses as may be ascertained following 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