



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were given full opportunity to be heard, to present evidence and to make submissions. All persons attending the conference provided their evidence under oath.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began in May 2009. Rent in the amount of \$2,000.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$1,000.00 and a pet deposit in the amount of \$1,000.00. The Tenant does not dispute that rent has not been paid for March and April 2012 and states that this has not been paid due to a loss of quiet enjoyment of the unit.

The Landlord states that the Tenant failed to pay rent for February, March and April 2012 and that on March 2, 2012 the Landlord posted a 10 day notice to end tenancy for unpaid rent (the “Notice”) on the Tenant’s door. The Tenant disputes that the Notice was posted on the door. The Landlord’s Witness states that the Landlord was observed by the Witness posting the Notice on the Tenant’s door in the morning of March 2, 2012, that no person opened the door while the Landlord was at the unit and that a vehicle was parked in the driveway at the time. The Tenant’s Witness states that he is at the

unit every day and does not go out of the house at all and can't walk. This Witness further states that he does go out of the house to have a cigarette every couple of hours and that nothing was ever seen posted on the door.

The Tenant states that rent for February has been paid and supplied a receipt of evidence of such payment. The Landlord states that the signature on the February receipt does not contain the Landlord's signature. The Landlord further states that the Tenant always fills out the receipt and the Landlord signs the receipt. The Landlord's support person states that the Landlord is known to sign receipts without reading them as the Landlord has limited English reading and writing ability. The Landlord claims rental arrears and costs of hiring a bailiff.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

I accept the Landlord's evidence that the Tenant was served with a notice to end tenancy for non-payment of rent. Although the Tenant disputes having received the Notice, I find that the Tenant's Witness in relation to this Notice is not helpful in making a determination as this Witness provided contradictory evidence about being on the outside of the unit. Accordingly, and given the evidence of the Tenant of unpaid March rent, I find the Notice to be valid. The Tenant has not filed an application to dispute the notice, has not paid the outstanding rent and has not moved out of the unit. Given these facts, I find that the Landlord is entitled to an **Order of Possession**.

Given the evidence of the Parties in relation to the provision of receipts, I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenant failed to pay rent for February 2012. Given the evidence of the Tenant, I find that the Landlord has established a monetary claim for **\$4,000.00** in unpaid rent for March and April 2012. The Landlord is also entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$4,050.00**. Setting the security deposit plus interest of **\$2,000.00** off the entitlement leaves the amount of **\$2,050.00** payable by the Tenant to the Landlord. The Tenant is at liberty to make an application in relation to any loss of quiet enjoyment that may be claimed. As the Tenant has time to move out the unit, I find that the Landlord has made a claim in relation to a bailiff before such a need has even occurred and I dismiss this part of the Landlord's application with leave to reapply.

Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail 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 order** that the Landlord retain the **deposit** and interest of \$2,000.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,050.00**. If necessary, this order may be filed 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 10, 2012.

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Residential Tenancy Branch