



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Tenant for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on October 1, 2006. On July 27, 2011, the Parties entered into a one year fixed term tenancy agreement commencing October 1, 2011. Rent is \$1,227.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$497.50 on September 12, 2006.

The Landlord's agent said the Tenant did not pay rent for March 2012 and did not pay rent for April 2012 when it was due and as a result on April 9, 2012, he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the rental unit door. The Parties agree that the Tenant has not paid the overdue rent for March and April 2012 and has not paid rent for May 2012.

### Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 9, 2012 when it was posted to the rental unit door. Under s. 90 of the Act, the Tenant is deemed to have received the Notice 3 days later or on April 12, 2012. Consequently, the Tenant would have had to pay the overdue rent alleged on the Notice or apply to dispute that amount no later than April 17, 2012. I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

I also find that the Landlord is entitled to recover rent arrears of \$1,227.00 for both March and April 2012 and rent for May 2012 in the pro-rated amount of \$593.71. The Landlord may apply for a loss of rental income if it incurs any. I also find that the Landlord is entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$497.50 plus accrued interest of \$15.83 in partial payment of the rent arrears. The Landlord will receive a Monetary Order for the balance owing as follows:

Rent arrears:	\$3,047.71
Filing fee:	<u>\$50.00</u>
Subtotal:	\$3,097.71
Less: Security Deposit:	(\$497.50)
Accrued Interest:	<u>(\$15.83)</u>
Balance Owing:	\$2,584.38

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$2,584.38** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: May 15, 2012.

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Residential Tenancy Branch