



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD and FF

This application was brought by the landlord on April 24, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on April 11, 2012. The landlord also sought a Monetary Order for unpaid rent, NSF and late fees, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

As the commencement of the hearing, the landlord advised that the tenant had vacated the rental unit without notice or providing a forwarding address in the latter part of April 2012. Therefore, he withdrew the request for the Order of Possession.

Despite having been served with the Notice of Hearing sent by registered mail on April 26, 2012, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award as requested.

### Background and Evidence

This tenancy began on July 1, 2009. Rent was \$815 per month and the landlord holds a security deposit of \$400 paid on June 23, 2009.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served when the tenant's rent cheque for April 2012 was returned NSF. Consequently, the landlord requests a monetary award for the unpaid rent plus NSF fee of \$20 and late fee of \$25, as per the rental agreement.

### 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 24, 2012 taking into account the three days deemed service of notice served by posting.

Accordingly, I find that the landlord is entitled to a Monetary Order for the unpaid rent, late fee, NSF fee, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off as follows:

Rent April 2012	\$815.00
Late fee	25.00
Filing fee	<u>50.00</u>
Sub total	\$910.00
Less retained security deposit (No interest due)	<u>- 400.00</u>
<b>TOTAL</b>	<b>\$510.00</b>

### Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is also accompanied by a Monetary Order for \$510.00 enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application for damage or losses 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: May 15, 2012.

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Residential Tenancy Branch