



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNSD and FF

This application was brought by the landlord on June 12, 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 June 3, 2012. The landlord also sought a Monetary Order for unpaid rent, damage to the rental unit, recovery of the filing fee and authorization to retain the security deposit in set off.

As a matter of note, I cannot deal with the claim in damage to the rental unit in the present hearing as the tenancy has not yet ended and it remains possible the tenant may remedy the damage in meantime. In addition, I have no evidence other than photographs to assess the monetary claim.

Despite having been served with the Notice of Hearing sent by registered mail on June 13, 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. .

### Background and Evidence

According to the landlord, this tenancy began on April 1, 2011. Rent is \$650 per month and the landlord holds a security deposit of \$325 paid at the beginning of the tenancy.

During the hearing, the landlord agent gave evidence that he had served an earlier Notice to End Tenancy but his application for an Order of Possession had been dismissed at a hearing on May 11, 2012 as he had been unable to attend. His subsequent application for a Review Hearing was dismissed for want of evidence.

The landlord stated that the Notice to End Tenancy of June 3, 2012 had been served after the tenant had a rent shortfall of \$111.92 for each of February and March of 2012. The landlord stated that this had occurred because, during those months, the Ministry had paid \$538.08 of the tenant's rent directly to him and the tenant failed to pay the balance in cash as she had previously done.

In March, April, May and June of 2012, the Ministry no longer paid a portion of the rent to the landlord and the landlord stated he had received no rent for those four months.

The landlord also referred to another hearing between the parties on the tenant's application and provided a file number. On perusing that file to ensure present claims had not already been heard, I note that in the result, the Dispute Resolution Officer's Decision of June 11, 2012 authorized the tenant to withhold \$237.50 from her rent due on July 1, 2012 in compensation for facilities not provided.

The landlord requested filing fees for his previous hearing and review application and was advised that I cannot consider fees for hearings other than the present one.

### 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 June 16, 2012 taking into account the three days deemed service of notice served by posting..

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.

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

However, as the landlord's totals did not include the February and March rent shortfalls in his application or on the Notice to End Tenancy, I must dismiss those claims on the grounds that the tenant was not made aware that the landlord would be making them.

As I am ordering the tenancy to end within two days, the tenant will not have the opportunity to withhold the \$237.50 from July rent as authorized in the most recent of the previous hearings. Therefore, in the interest of administrative efficiency, I credit the tenant with that amount in the present monetary award, calculated as follows:

<b>Award to Landlord</b>		
Rent for May 2012	650.00	
Rent for June 2012	650.00	
Filing fee	<u>50.00</u>	
Sub total	\$2,000.00	\$2,000.00
<b>Tenant's Credits</b>		
Security deposit (No interest due)	\$325.00	
Amount authorized to be held back from July 2012 rent	<u>237.50</u>	
Sub total	\$562.50	<u>- 562.50</u>
<b>TOTAL</b>		<b>\$1,437.50</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.

In addition to authorization to retain the security deposit in set off, and taking into account the credit previously granted to the tenant, the landlord's copy of this decision is

also accompanied by a Monetary Order for **\$1,437.50**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make application for any further loss or damage 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: June 28, 2012.

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Residential Tenancy Branch