



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an application for dispute resolution under the Residential Tenancy Act (the “Act”) by the landlord for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and to recover the filing fee.

The parties appeared, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

There were no issues regarding the receipt of evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

**Preliminary matter:** The parties were repeatedly cautioned against interrupting the other party during testimony; however neither party was successful in so doing, both making constant interruptions during this hearing. The parties were not given a final opportunity to ask questions after the conclusion of the testimony due to their inability to refrain from interrupting the proceeding.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and to recover the filing fee?

### Background and Evidence

There was no tenancy agreement entered into evidence. I heard undisputed testimony that this month to month tenancy began on April 1, 2012, monthly rent is \$1175.00, and a security deposit of half a month's rent was paid by the tenants at the beginning of the tenancy.

The landlord gave affirmed testimony and supplied evidence that on July 2, 2012, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting on the door, listing unpaid rent of \$587.50 as of July 1, 2012.

The effective vacancy date was not listed on the Notice. Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later, or in this case, the Notice served on *July 2* was deemed served upon the tenants on *July 5, 2012*. As the Notice did not list an effective move out date, I find it reasonable to amend the Notice to list the effective end of tenancy date to *July 15, 2012*, or 10 days after the date the tenants were deemed served with the Notice.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

Thus the tenants were required to file an application for dispute resolution or pay the rent in full by *July 10, 2012*.

The parties confirmed that tenant did pay the rent listed on the Notice in full in cash, but that the payment was made on *July 13, 2012*.

The landlord said that as she has been paid in full, she no longer requests a monetary order, but still requests an order of possession.

The tenant further submitted that the landlord was agreeable to accept the rent late and that she will have the next month's rent paid in advance.

The landlord disputed that she made that statement, confirming that she very much wanted an order of possession.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The tenants did not pay the outstanding rent or apply to dispute the Notice within 5 days and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I have next considered whether or not the parties expressly or impliedly consented to the withdrawal of the Notice by the landlord's acceptance of the rent after the 5 day period given by the Notice.

As the tenant stated that the landlord agreed to accept a late payment of rent, she bore the burden to prove that the landlord made this agreement. The landlord denied making the statement, which becomes disputed verbal testimony, which I find does sufficiently prove the statement was made.

I therefore find that there was not an express or implied consent to the withdrawal of the Notice.

### Conclusion

Due to the above, I find that the landlord is entitled to an order of possession effective 2 days after service on the tenants. This order is a final, legally binding order, and may be filed in the Supreme Court of British Columbia should the tenants fail to comply with this order by vacating the rental unit.

I find the landlord is entitled to recover the filing fee of \$50.00 and she is directed retain this amount from the tenants' security deposit of \$587.50 in satisfaction of her monetary claim.

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: July 26, 2012.

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Residential Tenancy Branch