



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD and FF

### Introduction

This application was brought by the landlord on August 7, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on July 26, 2012. The landlord also sought a Monetary Order for unpaid rent. In addition, I have exercised the discretion granted under section 64(3)(c) of the *Act* to permit the landlord to amend his application to request authorization to retain the security deposit in set off against any balance found to be owed.

Despite having been served with the Notice of Hearing sent by registered mail on August 8, 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.

At the commencement of the hearing, the landlord advised that the tenant had paid a rent shortfall for July 2012, the August 2012 rent and the landlord's filing fee on September 4, 2012. The landlord stated that he had issued a receipt with the notation, "for use and occupancy only" indicating that acceptance of the overdue rent did not constitute reinstatement of the tenancy. The landlord stated that he wished to proceed with the request for an Order of Possession and the monetary award for September rent.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and a monetary award as requested.

### Background and Evidence

This tenancy began on or about May 1, 2006. Rent is \$540 per month and the landlord holds a security deposit of \$262.50 paid on or about May 1, 2006.

During the hearing, the landlord gave evidence that he served the 10-day Notice to End Tenancy of July 26, 2012 when the tenant had a rent shortfall of \$90 for the rent due on July 1, 2012.

He stated that, in the interim, the tenant did not pay the July rent shortfall of \$90 and the \$540 rent due on August 1, 2012 until September 4, 2012 when he also paid the \$50 to compensate the landlord for the \$50 filing fee for this proceeding. As noted, the landlord provided the tenant with the receipt indicating that acceptance of the payment was for use and occupancy only and did not reinstate the tenancy. The rent for September 2012 had not been paid at the time of the hearing on September 5, 2011.

The landlord now requests an Order of Possession to take effect on September 30, 2012, a Monetary Order for the September 2012 rent and authorization to retain the security deposit in set off.

### 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 August 5, 2012.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on September 30, 2012 as requested by the landlord.

I further find that the landlord is entitled to a Monetary Order for the unpaid rent for September 2012. As authorized under section 72 of the *Act*, I authorize the landlord to retain the security deposit plus interest in set off against the unpaid rent.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

|   |                 |
|---|-----------------|
| Rent for September 2012                           | \$540.00        |
| Less interest on deposit from May 1, 2006 to date | - <u>8.84</u>   |
| <b>TOTAL</b>                                      | <b>\$268.66</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 at 1 p.m. on September 30, 2012.

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 **\$268.66**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The landlord remains at liberty to make a further application for any damages 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: September 05, 2012.

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Residential Tenancy Branch