



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the landlord entitled to an order of possession?  
Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The tenancy began on or about March 1, 2012. The landlord testified that monthly rent was set at \$750.00 while the tenant claimed that rent was set at \$700.00. a tenancy agreement was not submitted into evidence. The landlord said that the tenant had the tenancy agreement while the tenant stated that she had never signed a tenancy agreement. The landlord testified that the tenant owed \$2,350.00 as of July 19 while the tenant claimed that she had last paid rent in June. The tenant acknowledged that she had not paid rent since June, testifying that she did not pay rent because the landlord did not perform repairs.

The landlord testified that she and her mother served the tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") on July 19. Several times I asked the tenant whether she had received the Notice and she replied that she did not have the Notice in her hands because she was at work. The tenant could not recall events in July.

The landlord seeks an order of possession and a monetary order in the amount of \$3,100.00, representing just over 4 months' rent at a rate of \$750.00 per month.

### Analysis

I found that the tenant's answers were evasive and incomplete. For that reason and because the tenant testified that she could not recall events in July, I accept the landlord's testimony regarding service of the Notice and I find that the tenant received

the Notice on July 19. Although the tenant claimed that she did not pay rent because the landlord had not performed repairs, section 26(1) of the Act requires tenants to pay rent when it is due regardless of the landlord's failure to comply with the Act. The tenant acknowledged that she did not pay rent for the month of July and because she did not pay rent within 5 days of receiving the Notice and did not apply for dispute resolution to dispute the Notice, pursuant to section 46(5) she is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary claim, because a written tenancy agreement was not entered into evidence to prove the amount of rent that the tenant is contractually obligated to pay, I find that the tenant was obligated to pay \$700.00 per month. As the landlord did not provide records showing what rent had been received on which dates and as the tenant testified that she had last paid rent in the month of June, I find that the tenant has not paid rent for the months of July – October inclusive, totalling \$3,500.00. The landlord claimed \$3,100.00 plus recovery of the \$50.00 filing fee paid to bring her application and she is limited to that amount. I find that the landlord should recover \$3,100.00 in unpaid rent and the \$50.00 filing fee and I grant the landlord an order under section 67 for \$3,150.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted an order of possession and a monetary order for \$3,150.00.

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: October 10, 2012

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Residential Tenancy Branch