



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD and FF

### Introduction

This application was brought by the landlord on September 18, 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 September 5, 2012.

The landlord also sought a Monetary Order for unpaid rent/loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security damage deposit in set off against the balance owed.

### Issue(s) to be Decided

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

### Background and Evidence

This tenancy began on January 25, 2011. Rent is \$688 per month and the landlord holds a security deposit of \$330 paid on January 21, 2011.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had failed to pay \$635 of the rent that was due on September 1, 2012.

The tenant made a payment of \$80 on September 17, 2012 reducing the balance owed to \$555 which the landlord acknowledged with a receipt with the notation, "for use and occupancy only," indicating that acceptance of the partial payment did not reinstate the tenancy.

In the interim, the tenant did not pay the rent due on October 1, 2012, but during the hearing she stated that the rent arrears had been paid in full and was in the landlord's mail box. The landlord left the hearing to check the mail box and stated that there was payment of \$80 from a support organization.

The tenant stated that payment of the balance was imminent, but the landlord said that, even if that was case, she still preferred to end the tenancy.

### 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 full 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 September 18, 2012, taking into account the three days for deemed service of documents 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, recovery of the filing fee for this proceeding and, as empowered by 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:

<b>Award to landlord</b>		
Rent for October 2012	688.00	
Filing fee	<u>50.00</u>	
Sub total	\$1,293.00	\$1,293.00
<b>Tenant's credits</b>		
Security deposit (No interest due)	\$ 330.00	
Payment made October 23, 2012	<u>80.00</u>	
Sub total	\$ 410.00	<u>- 410.00</u>
<b>TOTAL balance owed by tenant to landlord</b>		<b>\$ 883.00</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 of it on the tenant.

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 **\$883.00**, 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: October 23, 2012.

---

Residential Tenancy Branch