



# Dispute Resolution Services

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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 October 15, 2012 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person and posted on October 2, 2012. The landlord also sought a Monetary Order for unpaid rent, loss of rent, and recovery of the filing fee for this proceeding.

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 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 a an Order of Possession and monetary award as requested.

### **Background and Evidence**

This tenancy began on August 1, 2011. Rent is \$563 per month and the landlord holds a security deposit of \$270 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of October 2, 2012 had been served with the tenant had not paid the rent due on October 1, 2012. In the interim, the tenant remains in the rental unit and has not paid the rent due November 1, 2012.

The tenant concurred that she has not paid the rent as claimed by the landlord but stated she had offered the rent which was declined by the building manager.

Both the landlord and building manager gave evidence that they would have accepted the rent if it had been offered and the building manager stated that she had made a number of attempts to contact the tenant after serving the notice. She said that on two occasions, other persons had answered the tenant's door and told her the tenant was resting. She left a message asking the tenant to contact her, but there was no response.

The landlord stated that he had attempted to assist the tenant by permitting her to remain until November 5, 2012, a date on which she had stated she would be moving, but she had been unable to do so.

### 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 October 12, 2012.

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 for October 2012. In addition, taking into account time for mail delivery and preparation of the rental unit, I find that the landlord has no reasonable opportunity to find a new tenant for November 2012. Therefore, I find the monetary award should include unpaid rent and loss of rent for November 2012. I also award the landlord 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:

October 2012 rent	\$ 563.00
Filing fee	<u>50.00</u>
Sub total	\$1,176.00
Less retained security deposit (No interest due)	<u>- 270.00</u>
<b>TOTAL</b>	<b>\$ 906.00</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 **\$906.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: November 05, 2012.

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Residential Tenancy Branch