



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding, to keep the Tenant's security deposit in partial payment of those amounts and for other considerations.

The Landlord said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on October 30, 2012, but the Tenant had abandoned the rental unit. Based on the evidence of the Landlord, I find that the Landlords complied with s. 89 of the Act, but the Tenant could not be served as she had abandoned the unit and gave no forward address or information about how to contact her; therefore the hearing proceeded in the Tenant's absence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on July 6, 2012 as a month to month tenancy. Rent is \$1,250.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$655.00 on July 10, 2012.

The Landlord said that the Tenant did not pay \$1,250.00 of rent for October, 2012, when it was due and as a result, on October 18, 2012, she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 18, 2012 on the door of the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for November, 2012 in the amount of \$1,250.00 as the Tenant did not give proper notice that she was moving out of the rental unit.

The Landlord further indicated that she is unsure of the Tenants plans and the Landlord requested an Order of Possession for as soon as possible if their application is successful.

The Landlord also requested to recover the \$50.00 filing fee for this proceeding.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on October 21, 2012. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than October 26, 2012.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect December 4, 2012.

I also find that the Landlord is entitled to recover unpaid rent for October, 2012, in the total amount of \$1,250.00. I further find that the Landlord is entitled to recover lost rental income for November, 2012, in the amount of \$1,250.00 as the Tenant did not give proper notice to end the tenancy.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

|       |                        |            |            |
|-------|------------------------|------------|------------|
|       | Rent arrears:          | \$1,250.00 |            |
|       | Loss of Rental Income: | \$1,250.00 |            |
|       | Recover filing fee     | \$ 50.00   |            |
|       | Subtotal:              |            | \$2,550.00 |
| Less: | Security Deposit       | \$655.00   |            |
|       | Subtotal:              |            | \$ 655.00  |
|       | Balance Owing          |            | \$1,895.00 |

Conclusion

An Order of Possession effective December 4, 2012 and a Monetary Order in the amount of \$1,895.00 have been issued to the Landlords. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

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Residential Tenancy Branch